

ELECTION CASES
INDIA & BURMA
1920—1935

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1920—1935

By Sir Laurie Hammond,

K.C.S.I., C.B.E.

Chairman, Delimitation Committee, 1935-36

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PREFACE

In the United Kingdom election petitions except perhaps for a recount, are a product of the past, and those recorded in the volumes of *O'Malley and Hardcastle* provide a complete *corpus* of election law. No candidate, no election agent would dare to depart from this well defined track of precedent.

The same, doubtless, will eventually be the case in India and Burma. But for many years to come there will still have to be election inquiries. The CORRUPT PRACTICES AND ELECTION PETITIONS ORDER of 1936, and the Governors' Rules will require judicial interpretation. For example, opinions may differ as to what is meant by 'customary hospitality'. The imposition of a maximum on election expenditure may lead to the return of election expenses being more frequently challenged. The large number of cases dealing with the publication of false statements or the use of spiritual intimidation, have not yet achieved finality in the enunciation of juridical principles. Lastly with an electorate of some thirty-five millions, there may, despite the remarkable organizing capacity of the Civil Services, be mishaps or irregularities which may, or may not, 'materially affect' the result of the election.

The CORRUPT PRACTICES ORDER, 1936 and the Governors' Rules should remove some of the difficulties experienced in the past, as they have adopted some of the amendments suggested in the reports. A candidate can now only claim the seat on the ground that he would have obtained a majority of valid votes. The employment of an agent, disqualified for corrupt practices will avoid the election. If a person votes twice at the same election, not being entitled so to do, all his votes will be rejected. These are all points discussed in the cases published in this volume.

The selection of cases has not been easy. Some have been retained to show the Returning Officer what he should not do. Others may be of assistance to an Election Tribunal in shewing the standard of evidence necessary, or the principles to be observed in allocating costs. From others the candidate may derive advice regarding procedure, as for example in the identification of voters, or in drawing the attention of Presiding Officers to any corrupt practice or irregularity.

In the Appendices the Reader will find the Corrupt Practices Order based on the rules under the Government of India Act with such amendments as were found necessary. Appendix II gives the leading case of *Woodward v. Sarsons* which everyone connected with elections should read, both as regards theory and practice.

It is not customary to dedicate a book containing reports of law cases, but I would like to associate with this volume the names of ~~SIR~~ VENTAKA SUBHA RAO of the Madras High Court, and Mr. DIN MUHAMMED of the Punjab High Court, my colleagues on the Indian Delimitation Committee. During the cold weather of 1935-36 we visited every Province in India, and apart from recorded evidence, met many members of the various Legislatures and many who had been candidates. From conversations, formal and informal, we learnt much of the difficulties which attend an election of India, and also of the efforts, proper and improper, made to bring India's electoral law into harmony with the customs and desires of the electorate.

Editing this book brought back an echo of our pleasant and interesting discussions.

LAURIE HAMMOND.

Blue Haze.

Walmer.

September 28th, 1936.

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ELECTION CASES

INDIA & BURMA

1920—1935

CASE No. I
Agra City (N.-M.U.) 1925

L. BUDDHI MAL *Petitioner,*

versus

SETH ACHAL SINGH
and afterwards

RAM SAHAI *Respondent.*

Evidence necessary to prove personation discussed. Election agent should only identify voters whom he personally knows.

An election is void if agent of candidate abets or connives at personation. (Para 3 of part I of first schedule to Corrupt Practices Order, 1936.)

The publication of a false statement calculated to prejudice the prospects of a candidate's election must relate to the personal conduct and character of the candidate. (Para 5 of part I of first schedule, Corrupt Practices Order, 1936.)

The issue of an erroneous statement as to the number of votes recorded for the respective candidates during the progress of the poll does not necessarily amount to undue influence ; there must be proof that the statement is reasonably calculated to prejudice the prospects of the candidate's election.

A "party candidate" is responsible for the acts done by that party's agency.

Validity of votes at a recount examined.

THERE were three candidates and the result was announced as follows :—

			<i>Votes.</i>
Seth Achal Singh	..	..	1,431
Babu Kishan Lal	..	..	1,421
Babu Prag Narain	..	..	1,193

Subsequently there was a recount and various voting papers were examined by the Commissioners according to whose decision Seth Achal Singh obtained 1,430 votes and Babu Kishan Lal 1,425. The appendices to the report give the reasons for the decision accepting or rejecting the various ballot-papers.

The petitioner alleged definite acts of personation, while four leaflets alleged to be published by the respondent were impugned as containing false statements about the character of the other candidate Babu Kishan Lal, or amounting to undue influence reasonably calculated to prejudice the prospects of Babu Kishan Lal's election.

Six cases of personation were alleged by the petitioner.

(a) Piare, son of Nathu Chamar, of Tila Ajmeri Khan, voter no. 416 in Rikabganj ward.

It was proved by Naib Ali, head mortuary clerk of the municipal board office, that the register of deaths shows that Piare Lal, son of Nathu, Chamar, of Tila Ajmeri Khan in the Rikabganj circle, died on January 4, 1925. The evidence of death was confirmed by four other witnesses who stated "that the man who died was the man on the electoral roll". It is not contested by the defence that this voter was dead at the time of election. Jai Narain Singh, states that he was polling agent of Seth Achal Singh at this polling station and that he signed exhibit 10 as identifying the person who voted as Piare Lal, and that he had no personal knowledge of this voter before. He says that he came to vote and gave his name and on his mere statement the witness identified him. The only steps he took to inquire into the matter were to ask the office clerks the name and parentage of the voter; that is, he asked what was entered on the roll.

The defence does not deny that Jagannath committed personation. It is contended that one Liaquat, son of Chutta Qasai, a supporter of B. Kishan Lal, took Jagannath to the polling station. This Liaquat has not been produced by the defence. This evidence does not appear to be true, because Jagannath voted for Seth Achal Singh and not for B. Kishan Lal, and he was identified by the polling agent of Seth Achal Singh.

The fact is undisputed that Jagannath committed personation and that he was identified by the polling agent of Seth Achal Singh. The defence put forward a case that Jagannath had brought his water rate

receipts to the polling station and had shown them to the officer. The suggestion that Jagannath showed anyone at the polling station his water rate receipts appears to have been invented by the defence at a later date.

(b) Tika, son of Ratan Lal, Chamar of Haveli, Bahadur Khan, voter no. 2048, Chatta ward, polling station Parmath ki Kothi.

The witness for both sides agree that this man died some years ago and was not alive at the time of election. Beni, son of Tika, gave evidence which was hostile to the petitioner and represented at first that his father was living at the time of election, but was away on business. When cross-examined by the petitioner with the leave of the court, however, he admitted that his father died $2\frac{1}{2}$ years ago. He said that a man of Seth Jaswant Rai, brother of Seth Achal Singh, told him that a son could vote for his father. He voted for Seth Achal Singh and he represents that he did not know whether he was voting for himself or his father. He says he gave his father's name and his grandfather's name. When shown the signature slip he admitted that the name on it is his father's name and was written by him. The signature slip bears the letters TIK in Hindi and the identifying witness was H. R. Gupta. Beni has also said that Seth Achal Singh's man identified him at the polling station as Tika. Ram Singh, stated that Hari Ram Gupta identified Beni. The Commissioners had some difficulty in securing the attendance of Hari Ram Gupta and he only appeared after a warrant had been issued. He admitted that he signed the signature slip for Tika and that he did not know the voter before identifying him. He said that, when he did not know a voter personally, he verified his name, etc., from the clerk and saw that they tallied with the list, meaning apparently the electoral roll. This, of course, was no confirmation of the fact that the man was giving a correct name. The defence points out that Beni himself is on the roll as no. 566, Chatta ward (Beni, son of Tika, Chamar, shoe-maker of Belanganj). The roll is not marked in token of the fact that this person voted. Schedule V, part I, rule¹ 3 of the election rules defines personation as "the application by a person for a voting paper in the name of any other person, whether living or dead". It is clear from this definition that it is immaterial whether the name of Beni was or was not on the register. He applied for a voting paper in the name of another person and therefore he committed personation. Reference was made to *Boreilly City* case (see page 142), where the Commissioners held that there was a mistake by a voter who voted for another voter of the same name and that he was not guilty of personation. But the present case is entirely different because Beni did not vote in his own

¹ Now section 3 of part I of the first schedule of the Corrupt Practices and Election Petitions Order, 1936.

name, but in that of his father. Clearly therefore Beni committed personation. Hari Ram Gupta was the polling agent of Seth Achal Singh.

(c) Chidda Ram, son of Jasram, Chamar of Qazipara, voter no. 506, Rikabganj ward.

The vote for this person was first taken by means of a signature slip which bears a thumb mark and is signed by the polling agent of Seth Achal Singh in this ward, namely Srilal, Khazanchi, who has died since the election. Subsequently Chidda Ram, son of Jasram, Chamar, of Qazipara, came to vote and gave another signature slip which was signed by him and was also attested by Srilal, Khazanchi. As a person had already voted for no. 506, the vote was taken by means of a tendered vote. Both votes were for Seth Achal Singh, but only one was counted. The defence is that Chidda Ram, son of Jasram, was not the voter meant for no. 506, but that there was another Chidda Ram, son of Jasram, who voted correctly for that number, and consequently there was no personation. There are three defence witnesses, who claim to have known this other Chidda Ram, son of Jasram, and one of them claims that the other Chidda Ram rented a house from him. Only D.W., Debi Singh, says that this other Chidda Ram was a voter. The defence did not produce any Chidda Ram, son of Jasram, and the Commissioners do not believe that any such person existed. Moreover, if Chidda Ram was not the person intended by the electoral roll for no. 506, the polling agent for Seth Achal Singh should not have identified him.

Of the six cases of alleged personation the Commissioners were of opinion that these three were fully proved. "The persons who identified the men who voted in these three cases were all election agents of Seth Achal Singh. In the *Jaunpur* case (see page 422), it was held that an election agent should only make identification in cases where he has personal knowledge. This is in accordance with rule 21 of the regulations for election to the Legislative Council of the United Provinces which says that every signature or thumb-impression made by a voter shall be attested by any candidate or his representative who may be able to recognize the voter. Moreover, the meaning of the word 'attest' is that the person attesting should personally know the individual whom he attests. Reference was made by the defence to *Sheikhupura*¹ case, where it was held that an isolated case of personation may be due to the ignorance of a voter who may have attempted to have innocently voted by proxy, or may be due possibly to the machinations of a scheming rival candidate. The present case, however, stands on quite a different footing, as there are three cases of personation clearly proved, and in each case the person identifying was the election agent of Seth Achal Singh. Also the evidence in the *Sheikhupura* case was of much less value because the real voters

¹ I.E.P. II, 261.

alleged that they did vote and the alleged impersonators denied that they voted. In the present case two of the electors concerned were dead at the time of election. The two election agents who have been examined admit that they identified persons of whom they had no knowledge. The vakil for the respondent contends that this is a common practice. If so, it ought to be stopped. The vakil for defence claims that under ¹ election rule 44(2) it is not necessary for the Commissioners to find the election void, even though they find that the agent of the returned candidate has been guilty of a corrupt practice specified in part I of schedule V; but the vakil has made two mistakes in reading the rule. Firstly, the rule only applies where the agent is not the election agent and secondly, where the corrupt practice is not bribery or the procuring or abetment of personation. The case therefore comes under the first part of the rule, sub-head (b); and under that provision the election of the returned candidate shall be void if the Commissioners consider that any corrupt practice such as is specified in part I, schedule V, has been committed. By identifying these three persons the election agents of Seth Achal Singh enabled them to obtain voting papers in the name of other persons. The election agents admit that they did not know the applicants personally. By identifying the applicants the election agents falsely represented that they did not ² know the applicants personally. The election agents therefore committed abetment of the personation and connived at it within the meaning of schedule V, part I, rule 3, and committed a corrupt practice. The Commissioners were therefore unanimously of opinion that the election of Seth Achal Singh was void because his election agents committed these three instances of corrupt practice under schedule V, part I. The other three instances are held not proved."

The Commissioners found that appendix no. I was printed on behalf of Seth Achal Singh and that it contained false statements about the character of Babu Kishan Lal. "The pamphlet was a cartoon headed: "This man has a place for himself neither in this world nor in the other". It is divided into three parts. The first part represents B. Kishan Lal, who is stated to be a "selfish candidate" asking for the votes of the trading class on the ground that he will try to improve trade. A seth and dalal replies: "O Lalaji go away by bearing post. Will you do the same kind of service that you did in the corner in yarn? Thanks for your improvement of trade." There is a certain amount of evidence that in 1924 certain firms in which B. Kishan Lal was a partner made large purchases of yarn and the price of yarn rose in consequence. In the second part of the cartoon B. Kishan Lal is represented as asking for the

¹ Now paragraph 7(2) of part III of the Corrupt Practices Order in Council.

² This portion of the report is reproduced *verbatim* from the report published in the U.P. Gazette of 26th January, 1926. Presumably the word 'not' should be omitted.

votes of three poor persons who are so emaciated that they appear as mere skeletons. These persons are shown as replying "O Lalaji, you made a contract with Government for *ghi*, wheat and other things, and prices rose so much that we became skeletons from hunger. You merely pretend that you are going to serve us because you want our votes". There is evidence that the firms in which B. Kishan Lal is interested did take contracts for *ghi* and rice from Government, but there is no evidence that any contract was taken in wheat. There is some evidence for defence that the price of *ghi* rose, but the Commissioners are not satisfied that it rose on account of the contracts entered into by these firms. The Commissioners consider that the statement that the poor people of Agra were turned into skeletons by reason of B. Kishan Lal's *ghi* contract is a statement which is false to the knowledge of the person making it.

In the third part B. Kishan Lal is represented as appealing to a military officer to send him to the Council on the ground that he was an old contractor, and the military officer is represented as saying: "Go away; you are..." The vakil for defence says that the blank should be filled in by the words "Go away; you are a dismissed contractor". An attempt was made by the defence by issuing a commission to Major Scott in Naini Tal, D.A.D.S. and T., Eastern Command, to show that the firms in which B. Kishan Lal was interested were dismissed as contractors. The witness says that two of the firms had been contractors, but were not now on the list of the department. He was unable to state the reasons as the matter was strictly confidential.

It was argued by the defence that the statements were not about the personal character of B. Kishan Lal because they referred to the business of the firms of which he was a partner. The Commissioners were referred to *West Coast and Nilgiri's* case (see page 712), in which it was held that the statement that the petitioner voted with Government for the enhancement of the salt tax was not a statement in relation to the personal character and conduct of the petitioner. We agree with the interpretation placed on the words in this ruling, and we consider that schedule V, part I, rule 4,¹ refers to the personal character or conduct of a candidate as opposed to his public conduct as a public man in political life. The statement in the ruling refers to the action of the petitioner as an elected member of Council, which is, of course, in a public character. Rogers on Elections, volume II, 19th edition, page 560, quotes Darling, J., in *Cockermouth* (1901), 5 O'M. and H. 159: "It is not an offence to say something which may be severe about another person, nor which may be unjustifiable, nor which may be derogatory, unless it amounts to a false statement of fact in relation

¹ Now section 5, part I of first schedule of Corrupt Practices Order, 1936.

to the personal character or conduct of such candidate ; and I think the Act says that there is a great distinction to be drawn between a false statement of fact which affects the personal character or conduct, of the candidate, and a false statement of fact which deals with the political position or reputation or action of the candidate. If that were not kept in mind this statute would simply have prohibited at election times all sorts of criticism which was not strictly true, even relating to the political behaviour and opinions of the candidate. That is why it carefully provides that the false statement, in order to be an illegal practice, must relate to the personal character and personal conduct. One can easily imagine this kind of thing. To say of a person that he was a fraudulent bankrupt would,¹ undoubtedly, be within the statute ”.

Rogers on page 558 states : “ In *Bayley v. Edmunds* and others (1895), 11 Times L.R. 537, the defendants had distributed a leaflet amongst the electors stating that the firm of which the plaintiff was a member had locked out their miners for six weeks until the price of coal reached 22s. or 23s. at the pits, and that then the plaintiff’s conscience would not allow him to starve the poor miners more. The Court of Appeal held that such statements were derogatory to the personal character of the plaintiff and came within the section, and granted an injunction.”

The statements in the cartoon in the present case are rather similar, that the firm of which the candidate was a member caused starvation to poor men. These statements in regard to the trading transactions of private firms cannot be taken to refer to the public acts of a public man. We consider, therefore, that the statements in the cartoon do refer to the personal character and conduct of B. Kishan Lal ; and we consider that the statements are false in the particulars which we have noted.

It has been held in the *Ballia* case (see page 117), that a candidate who does not take reasonable precautions to satisfy himself of the truth of the allegations made in a document is guilty of a corrupt practice, as defined by schedule V, part I, paragraph 4, and is, therefore, debarred from being elected.

The third part of this issue is : “ Were the statements reasonably calculated to prejudice the election of B. Kishan Lal ? ”

“ We consider that these statements would have that effect upon the prospects of B. Kishan Lal and there is evidence to that effect. We consider, therefore, that the election of Seth Achal Singh is void ² under rule 44 (1) (b) of the election rules on account of this corrupt practice, which comes under schedule V, part I.

¹ The actual wording of this passage is as follows : “ To say of a person that he was a fraudulent bankrupt, it would be necessary, probably, to give examples, but that sort of thing would, undoubtedly, be within the statute ”.

² Section 5, part I of first schedule of Corrupt Practices Order, 1936.

Another leaflet was a notice headed "Result of election up to 11 o'clock". At the bottom of the papers were words in English "rough guess", the rest of the pamphlet being in Hindi. This gives the total number of votes for Seth Achal Singh as 1,856, for B. Prag Narain as 1,425 and for B. Kishan Lal as 1,340. The figures for Seth Achal Singh are 400 more than he got at the close of the day, and there were 17 votes for Seth Achal Singh which were rejected by the returning officer as invalid. The representation that Seth Achal Singh had a majority of 500 votes over B. Kishan Lal at 11 o'clock is absolutely erroneous. There is evidence on one side that this depressed the followers and voters of B. Kishan Lal, and on the other side that it made the voters and followers of Seth Achal Singh slacken. Undue influence is defined in schedule V, part I, rule 2, as interference with the free exercise of any electoral right. In English cases this has been held to cover any fraudulent device or contrivance. In the *Stepney* case (1886) quoted by Rogers on Elections, 19th edition, volume II, page 520, a misleading card was sent to each voter, and Denman, J., held that "there must be proof that some elector or electors had been actually impeded or prevented before it can be held that the offence has been committed". Two witnesses do state that after seeing appendix II they refrained from voting and they would otherwise have voted for B. Kishan Lal, but the Commissioners consider this evidence insufficient.

On the second part of the issue, whether Seth Achal Singh published or caused to be published this notice, there are 13 witnesses for the petitioner who deposed that it was published on behalf of Seth Achal Singh, and there is no evidence for the defence that it was being distributed on behalf of any other candidate. We find, therefore, that Seth Achal Singh caused it to be published; but, as we have found that it did not amount to undue influence, our finding on this issue is in favour of the defence."

The third pamphlet issued by the president of the Swaraj party enjoined the voters to vote for Seth Achal Singh who was the candidate for the Swaraj party. It gave the names of the three candidates as:—

No. 1, Seth Achal Singh.

No. 2, Babu Kishan Lal.

No. 3, Babu Prag Narain.

In the gazette of April the 25th, 1925, and in the voting papers the order of the candidates was given as:—

No. 1, Seth Achal Singh.

No. 2, Babu Prag Narain.

No. 3, Babu Kishan Lal.

The pamphlet of the Swaraj party therefore reversed the order of the name of Babu Kishan Lal from the order in which they were given previously in the gazette.

It is represented by B. Jaspat Rai and by defence witnesses that after the election began they discovered the mistake which had been made, and the Swaraj party caused a proclamation to be made by beat of drum stating that the wrong order had been given in their pamphlet. The mere fact that publication by beat of drum was considered necessary is an admission that the pamphlet contained a false statement and that the statement was calculated to affect the prospects of the two candidates concerned. It has been argued that illiterate people would not be misled because they could ask the presiding officer ; but the rule leaves it optional with them to ask him or not. One witness, Amarnath, has stated that he had instructed some illiterate voters to vote according to appendix III, and some five or six told him later that they had voted wrongly. Two more also state that people were misled. It was argued that literate people would not be misled, but there are many people who can read just a few words with difficulty, and this class of voters might easily have been misled. It was argued that, as the president of the Swaraj party got the pamphlet printed, the candidate of that party would not be responsible. We consider that the candidate of a party is responsible for the acts done by that party's agency. B. Jaspat Rai says that he got this appendix printed at the Mahabir press and that Seth Achal Singh paid the expenses, a fact which Seth Achal Singh omitted to note in his return of expenses. Schedule V, part I, rule 4, makes it a corrupt practice to publish a false statement in relation to the candidature of any candidate, which statement is reasonably calculated to prejudice the prospects of such candidate's election. We consider that appendix III comes under this rule. Although the intention may not have been to deceive, still we consider that reasonable precautions were not taken, and liability, therefore, attaches to Seth Achal Singh, as held in the *Ballia* case (see page 113).

As regards the fourth pamphlet the Commissioners found that it did not bear on its face the true name and address of the printer and publisher. Therefore a corrupt practice had been committed under schedule V, part II, rule¹ 8. In view of the above findings the seat was declared vacant. The petitioner was allowed costs against Seth Achal Singh of Rs. 3,326-14-0 and as against Ram Sahai, who was substituted at a later date for the respondent—Rs. 888-8-0.

¹ Now sections of part III of first schedule of Corrupt Practices Order, 1936.

APPENDIX A.

Votes for KISHAN LALL rejected by the returning officer, which the Commissioners consider valid votes.

<i>Voting paper number.</i>	<i>Description.</i>
76/43	.. Has a mark / opposite Prag Narain and a mark X opposite Kishan Lal. Rogers on Elections, volume II, 19th edition, page 168, second and third figures, shows that similar ballot-papers in England have been held to be good votes for the candidate against whose name there is a X. This has been followed in the <i>Punjab North</i> case (see page 572), exhibit C-3.
17/13 ..	.. Has marks against all three candidates, that opposite Kishan Lal being a X, and those opposite the other two candidates being circular marks apparently obliterating crosses. Rogers, page 164, first figure, shows a ballot-paper which was held to be a good vote for the candidate against whose name there was a cross, "The other mark, in the space appropriated to Master, not being a cross, did not destroy the vote".
17/14 ..	.. Has two marks 45 which may be attempts to make a cross, or may be the Hindi numbers 45. Both marks were in the space opposite Kishan Lal. Rogers on page 158 bottom figure, 159 top figure, 162 top figure, 169 top figure, gives cases of marks which were not a cross which made a valid vote. It was suggested that the voter might be identified by the Hindi numbers 45, but this suggestion appears far-fetched.
37/9	.. Has a cross opposite Kishan Lal, but a partial thumb mark also. This was probably caused by the voter having had ink on his left thumb when his impression was taken on the signature slip. It would be impossible to identify the voter by this, as an expert would have to compare the thumb-impressions of all the voters for this purpose. For these reasons it was held in the <i>Punjab North (M.)</i> case (see page 574), that eighteen such votes were valid.

APPENDIX B.

Vote for ACHAL SINGH rejected by the returning officer, which the Commissioners consider a valid vote.

<i>Voting paper number.</i>	<i>Description.</i>
26/34 ..	.. This has a X with the intersection in the space opposite Achal Singh, and part of the X extends into the space opposite Prag Narain. Rogers on Elections, volume II, 19th edition, page 155, top, refers to three cases where such ballot-papers were held valid votes for the candidate opposite whose name the intersection of the X appeared, and lower figure on page 161 and lower figure on page 167 illustrate this.

APPENDIX C.

Votes for KISHAN LALL, which the Commissioners consider that the returning officer rightly rejected.

<i>Voting paper number.</i>	<i>Description.</i>
76/33 ..	.. The X was below the compartments of all three candidates. This has been held to be a bad vote in Rogers on Elections, 19th edition, volume II, lower figure on page 170.
27/63 and 66/32	.. The cross is placed as above, but a small part of the X comes into the compartment of Kishan Lal, not the intersection. Following the above ruling in Rogers the votes are invalid.
*30 35 ..	.. A mark ✓ partly opposite Prag Narain and partly opposite Kishan Lal. Invalid for uncertainty.
63/69 ..	.. Signature of voter in serafi, read as Madan Manuna. A signature is invalid under the election regulations.

APPENDIX D.

Votes for ACHAL SINGH, which the Commissioners consider that the returning officer rightly rejected.

<i>Voting paper number.</i>	<i>Description.</i>
29/12, 51/27, 27/62 . .	Rejected for a name being written. In the latter two cases the name of the candidate was written. Rogers on Elections, volume II, 19th edition, page 169, gives a case where this was held to invalidate a ballot-paper.
56/100, 73/55, 88/12, 62/97, 64/78.	The mark was above the name compartments of all the candidates. Rogers, page 170, gives a case where such marks were held to invalidate the ballot-paper.

APPENDIX E.

Votes which the Commissioners consider the returning officer rightly held valid.

*Voting paper
number.*

Description.

FOR ACHAL SINGH.

- 1/nil The presiding officer forgot to put the serial number and there is only the book number. Book no. 1 has 100 counterfoils. It is not shown that there were more than this number of outer foils marked book no. 1. Regulation 22 does not require a serial number on the outer foil, only on the counterfoils, and all counterfoils in book no. 1 are duly numbered.

FOR KISHAN LAL.

- 30 14 There is a X opposite Kishan Lal.
Objection was taken to a faint / opposite Achal Singh. This mark was not made in pencil, as the marks by voters are made, but with a pen. It appears to have been accidentally made by some one not the voter and cannot invalidate the vote.

CASE No. II
Agra City (1926)

LALA BABU LAL *Petitioner,*

versus

BABU PRAG NARAIN *Respondent.*

The following acts were held to amount to bribery :—

- (1) Creation, at instance of candidate when a municipal commissioner, of an additional seat in a ward.
- (2) Removal of a latrine at request of a supporter.
- (3) Improper payment of salary to a municipal employee.
- (4) Creation of new post by municipal board.
- (5) Appointments on exhibition committee.
- (6) Subscription towards repairs of a temple by a candidate who was a follower of the Arya Samaj.
- (7) Remission of interest to a judgment-debtor.

A threat to disclose an improper letter amounts to undue influence.

The instigation of filing a criminal case to prevent a man working as canvasser or agent is undue influence. Though it is not compulsory for a candidate to maintain accounts of his private expenditure their absence makes it impossible for the candidate to prove his election expenses.

CHARGES of bribery and undue influence were brought by the petitioner, a voter, Lala Babu Lal. The Commissioners found that in the municipal board of Agra, during the months of August and November 1926, there was great activity displayed by Babu Prag Narain's party consisting of eight members of the municipal board. The resolutions passed at the meetings held during those months "had the effect of ingratiating Babu Prag Narain with various electors and relations of electors". The specific instances proved were as follows :—

(a) One Babu Gopi Lal, wakil, who had worked as polling agent of Babu Kishan Lal, the other candidate, at two previous elections also signed the nomination paper for Babu Kishan Lal filed on October the 20th. He had never before worked for the respondent Babu Prag Narain at any previous election—Council or municipal. On the day of the election, however, November the 26th, Babu Gopi Lal appeared as the polling agent of Babu Prag Narain, and the latter says that Babu Gopi Lal worked as canvasser also on November the 25th. It was proved that at a special meeting of the municipal board on October the 29th, 1926, without any notice to the members of the board, a resolution was passed to the effect that pending a general re-distribution of wards, the number of Lohamandi ward members be increased by one. Babu Gopi Lal had been a candidate several times in elections for Lohamandi ward but had always been defeated obtaining second place. "It is clear that Babu Prag Narain gained the point for Babu Gopi Lal." Apart from this bribery, it was held that undue influence was also proved against Babu Prag Narain in the case of Babu Gopi Lal under the following circumstances :—

c. "Babu Gopi Lal admits that on October 5, 1925, he wrote a letter to a Bench Magistrate in the following terms :—

'There is a case before you to-day in the Bench Kundan vs. Kalimal. My voters are interested in the welfare of Kundan, complainant.—Gopi Lal, wakil, 5/10.'

A photograph of this letter is produced and Babu Gopi Lal is 'not prepared to deny that this is a photograph of my original' (exhibit 33). It is obvious that to write such a letter was professional misconduct on the part of the wakil, and a threat of disclosure would have a great influence on his conduct. Although naturally there is no direct evidence on the subject it is alleged that the letter was used in this way to induce Babu Gopi Lal to change his allegiance to the side of Babu Prag Narain."

Kanhaiya Lal started a cinema theatre close to a large covered masonry latrine in Hingkimandi, Kotwali ward and, in October, 1926 desired the removal of the latrine before he opened his theatre. The medical officer of health reported against the removal on October the 22nd. Three days later Babu Prag Narain gave notice of a resolution

for the removal of a public latrine and Kanhaiya Lal started collecting signatures for a petition written in his own handwriting which he sent to the board on October the 26th. At the meeting of October the 29th, it was resolved that the chairman should inspect and decide. On November the 4th the chairman recorded an order that the latrine should be removed and that the applicant should build an up-to-date standard latrine on a site to be selected by the vice-chairman, if necessary. The latrine was removed but not at the expense of Kanhaiya Lal and no new latrine was built by him. "It is obvious that Kanhaiya Lal has received a gratification in this matter on the resolution proposed by Babu Prag Narain."

The Commissioners considered that "it is proved that Kanhaiya Lal, theatre owner, received an illegal gratification on the resolution proposed by Babu Prag Narain which amounts to bribery".

Another charge of bribery related to the case of a water rate superintendent of the municipality, Babu Jey Behari Lal, whom the chairman tried to remove for inefficiency in 1925 and earlier. This man went on three months' leave and remained away for eighteen months without permission, receiving an order of dismissal from the executive officer on May 14, 1925. Eventually he canvassed all the members of the board and ten of them including five members of Babu Prag Narain's party and three members of Kishan Lal's party signed an application bringing the matter before the board. It appears that the board considered that the explanation of Jey Behari had not been taken, and eventually in the meeting of December 22, 1926, the board resolved "In view of his long service, and to put an end to the matter of Babu Jey Behari who resigns the service, his salary be paid. Babu Kishan Lal dissenting".

Out of fourteen members present there were seven of the party of Babu Prag Narain, including himself. Shiamlal says that Jey Behari Lal canvassed for Babu Prag Narain, but there is no other evidence of this, and Jey Behari Lal has no vote, though he admits that his brother has a vote. There is no doubt that the payment of eighteen months' full salary, Rs. 1,850-15-0, was contrary to the Civil Service Regulations, and the sanction of the Commissioner, which was necessary under the Act, was not asked. But the Commissioners are not satisfied that a case of bribery has been proved against Babu Prag Narain under this head.

Babu Ram Prashad Goel, vakil, intended to stand as a candidate at this election, but stated that he withdrew because Babu Prag Narain told him that this was the last time that he would stand, and that in a triangular contest he would have no chance, meaning that Babu Kishan Lal would get in. He withdrew, became a worker for Babu Prag Narain, canvassed for him and acted as his polling agent. His brother Dr. Kashinath Goel also worked for him and his father Babu Nath Mal issued literature for which he paid. The canvassing of the Goel family

for Babu Prag Narain was very successful. On the day after election, the municipal board appointed Dr. Kashinath Goel to the post of sanitary inspector on a salary of Rs. 75 and bicycle allowance, the resolution stating that a permanent hand was required for laboratory and school inspection. "The board therefore created a new post for which there was no provision in the budget . . . At that meeting out of eleven members six belonged to the party of Babu Prag Narain." The Commissioners considered that bribery was proved in this instance and that "the appointment of Dr. Kashinath Goel was a gratification to induce his brother, B. R. P. Goel, not to stand at the election".

It was also held that the remission of interest in the case of Lala Lachmi Narain, who was a judgment-debtor of the board, for the price of land in Freeganj amounted to bribery. "There is no doubt that the finance sub-committee were very generous with the money of the board on this occasion, and there appears to have been no reason to excuse the interest which the court had decreed to the board. On August the 27th, 1926, at the meeting of the board it was resolved to remit only half the interest. But at the subsequent meeting on October the 29th in which the party of Babu Prag Narain had the majority a resolution was passed that the applicant having been given assurance before the deposit of Rs. 205 and having acted on that assurance, the amount be remitted." The examination of the ballot-paper showed that Lala Lakshmi Narain had voted for Babu Prag Narain.

At a meeting of the municipal board on October the 29th, 1926. at the instance of Babu Prag Narain, Lala Gulab Chand, Lala Gopal Kishan and Lala Kanhaiya Lal (the owner of the theatre, referred to above), were co-opted members of the exhibition committee. Lala Gulab Chand and Lala Kanhaiya Lal acted as polling agents for Babu Prag Narain and Babu Gopal Kishan checked lists of voters for him. "The value of being on an exhibition committee may not be great, though it may eventually involve the control of expenditure; the Commissioners considered that in this case there was a gratification given by Babu Prag Narain to vote for him."

"A payment of Rs. 150 was made by Babu Prag Narain through, it was alleged, one Seth Tara Chand, whom the defence did not produce to deny it, towards the repairs of a temple, the repairs to which were a matter of local interest to the inhabitants of mohalla Bhairon. The nephew of Babu Prag Narain paid Rs. 100 and Seth Tara Chand Rs. 200, making Rs. 450 out of the total amount collected of Rs. 753. "Babu Prag Narain admits that he is a follower of the Arya Samaj who do not believe in temples. Also the fact that he denied the payment indicates that he has a guilty conscience. The rulings show that in the case of such gifts the criterion is the intention of the donor. In the present case the intention of the donor appears to have been to influence voters in

mohalla Bhairon." The Commissioners therefore considered that in this case the charge of bribery was proved.

From October the 20th to November the 24th the municipal treasurer, Lala Bishambhar Nath, was the election agent of Babu Prag Narain until he was removed on the representation of the chairman. The Commissioners considered that the employment of the municipal treasurer as an election agent was "improper", though the Government order prohibiting such appointments was issued after he had been appointed.

Certain annexures were filed with the petition. It was represented that they were false statements of facts published by Babu Prag Narain or with his connivance which would come under schedule V, part I, rule 4. Extracts from the annexures which come under this rule are as follows :—

"Ab ki bar mere mitr khub hoshyar raho aisai ko na vote do jo janat kuchhuna hai.

"Public ke dukh dard ka khiyal jinhe apni hi amad ko ja ke karen duna hai.

"Bagula sa dikhaiga hanson ki sabha ke madya kahen kavi santh jo budh ka bihuna hai.

"Council ke member bhi tali do hansenge khub dekhiye janab yeh Agra ke namuna hai.

"Hokar yeh Hindu hai Yamnon ka sathi bana Nawab Chhatari ad ko dawat khilawega.

"Milna Government se ise bund theke hue, Council men paunch nij theke khulwawega.

"Ap mitr hun banawe pher ankhen diklawe yeh asteen ka syap samai pai dus jawega." (Annexure M.)

"Shahr Agre bich men ailan member hogi ek bhari hai.

Ek taraf se Lalaji awaen dusri taraf se income jari hai."

Evidence was given by the brother of the candidate, Babu Kishan Lal, to show that these allegations against the personal character of Babu Kishan Lal were false. No attempts were made to rebut the evidence. The Commissioners considered the statements to be false and reasonably calculated to prejudice the prospects of the election of Babu Kishan Lal. It was held that Babu Prag Narain ~~paid~~ for the printing charges and was responsible for the publication of four of the annexures and was therefore guilty of the corrupt practice.

In a previous election petition from the same constituency in which judgment was delivered on the 8th January, 1926, Babu Jai Narain Singh was found guilty of a corrupt practice, viz., abetment of personation under schedule V, part I, rule 3. His name therefore should have been removed from the roll of electors on the first occasion when it was revised after the finding of the commission that he was guilty of a corrupt practice, as he was disqualified for five years from January the 8th, 1926. This was not done. Babu Prag Narain was a party to that case and must be

taken to have had notice of the finding published in the gazette. He admittedly engaged Jai Narain Singh as his polling agent and signed the slip appointing him as such. The Commissioners pointed out that under 31 and 32 Vict. C. 125 of Parliamentary Elections Act, 1868, section 44 provides that if a candidate is proved to have personally engaged as a canvasser or agent, any person, knowing that such person has within seven years previous to such engagement been found guilty of any corrupt practice by any competent legal tribunal or been reported guilty of any corrupt practice by a Committee of the House of Commons or by the report of the Judge upon an election petition the election of such candidate shall be void.

They pointed out that there is no similar provision in the electoral rules, "though it might very well be added". They considered that the action of Babu Prag Narain in appointing Babu Jai Narain Singh was "highly improper".¹

The allegation was made in the petition that Babu Prag Narain got one of his workers, Hazari Lal, to file a criminal complaint against Shankar Lal, a polling agent of Babu Kishan Lal, with intent to debar him from working and to overawe voters in the Rikabganj ward. The Commissioners found it proved that Babu Prag Narain did write a letter to Babu Puran Chand, a vakil, asking him to file this case, and further that on November the 8th, 1926, Babu Prag Narain wrote as follows on an application by Hazari Lal for the grant of a lease of land in Freeganj at Rs. 50 yearly from the municipal board, Agra :—

"I think the applicant would be a good lessee. I recommend the application."

Hazari Lal filed the criminal complaint of assault against Shankar Lal on November the 17th, 1926, and eventually a warrant was issued though the case ended in a compromise on January the 8th, 1927. It was argued for the defence that as the election took place on November the 26th, Shankar Lal was not aware of the proceedings. The Commissioners found that Shankar Lal's evidence showed that "he was aware of the proceedings and apparently evaded service of summons which, no doubt, must have interfered with his election work". The Commissioners considered it proved that Babu Prag Narain did instigate the filing of this criminal case by Hazari Lal against Shankar Lal with intent to debar Shankar Lal from working as canvasser and polling agent, and that this interference amounted to undue influence under rule 2, schedule V, part I.²

Finally, it was held that eight items of election expenses were not lodged in the prescribed manner. One of these related to a payment of

¹ See para. 7, part IV of Corrupt Practices Order, 1936.

² Section 2 of first schedule of Corrupt Practices Order, 1936.

Rs. 15 to Kishore Lal by Babu Lal, election agent for Babu Prag Narain. Kishore Lal stated that he received Rs. 50 from Babu Prag Narain and gave receipt for it. The explanation of the respondent was that he was willing to pay Rs. 10 to Kishore Lal in addition to the Rs. 15 already paid, of which Rs. 10 was not in fact paid. On November 16th, Babu Lal, election agent for Babu Prag Narain, wrote to a mukhtar saying—

“The affair of Babu Kishore Lal has been settled, and I have got the sum with me, he may take it from me at any time.”

The Commissioners were unable to believe the evidence that Kishore Lal's affair had been settled. A payment which had not been entered in the election returns was clearly made.

Another omission was the payment made to Saraswati Prashad, canvassing agent of the respondent. A letter from Babu Prag Narain was proved appointing him as canvassing agent on Rs. 20 p.m., dated the 2nd October, 1926. Only Rs. 10 was entered in the returns on this account. “The Commissioners considered that it is proved that in addition to the Rs. 10 entered, at least Rs. 20 more was paid to Saraswati Prashad. The contention of Babu Prag Narain that he may not have worked well is beside the point.”

Certain annexures were proved to have been printed for Babu Prag Narain at the Jain, Sarawast and Mahabir presses. “The returns do not show any payments made or sums still due to any of these printing presses.

The sums paid for hire of motors and tongas are not entered.

The books of the business firms owned by B. Prag Narain (Ice factories, etc.) show that there were three *hundis* drawn by Kunjimal on himself endorsed by B. Prag Narain, and it is admitted that these were accommodation *hundis* for the benefit of B. Prag Narain who sold them to the firm of Nandram Chotelal a firm owned by the wealthy Surajbhan and Tarachand, polling agent of B. Prag Narain. These *hundis* were dated October 19 and October 30 and December 9, 1926. The total sum is Rs. 3,000. This sum appears to have been a loan raised by B. Prag Narain, but he did not show it in the return of election expenses.

The books of the firm of B. Prag Narain show that considerable balances of the firm are retained in the possession of B. Prag Narain. Outside the books of the firm which only deal with income and expenditure of the firm, there are no books at all of B. Prag Narain according to his statement.

He earns a considerable income as a senior vakil and he has the income from his firm, but he states that he maintains no account at all of his private expenditure. It is not compulsory for a candidate to keep accounts of his private expenditure, but in the absence of such accounts

it is not possible for him to prove what expenditure he actually did make. For the return of election expenses made out by the election agent may of course have any number of omissions, as in fact the present return is proved to have.

We consider that the actual expenditure of B. Prag Narain is much greater than is shown by his return.

Our finding is that the return of election expenses was false in material particulars.

The Commissioners unanimously recommend that the election of B. Prag Narain is void under rule 44(1) of the election rules. As no other party claims the seat, the Commissioners report that the seat is vacant.

Under rule 5(3) the Commissioners report that B. Prag Narain is guilty of corrupt practices, and under rule 5(4) of having a return of election expenses false in material particulars, and under both sub-rules B. Prag Narain is ineligible for election for five years from the date of the finding in one case and the election in the other.

Under rule 7(2) the name of B. Prag Narain should be struck off the roll of electors. It was argued that for such an order notice was necessary under rule 47, but we consider that the serving of a copy of the petition was sufficient compliance with that rule in the case of a candidate.

We allow the petitioner as costs against B. Prag Narain Rs. 5,843-10-0. The case has extended over one month so the amount is not excessive."

CASE No. III
Agra District (N.-M.R.) 1930

PIAREY LAL JAT *Petitioner,*

versus

(1) RAI BAHADUR MUNSHI AMBE PRASAD .. }
(2) BABU RAM } *Respondents.*

Definition of candidate discussed.

A candidate whose nomination paper has been refused need not file a return of election expenses.

THE petitioner, an elector in the constituency asked that the election of respondent no. 1 should be declared void on the ground that his nomination paper had been improperly accepted, and that of respondent no. 2 improperly rejected. He also asked for a declaration that respondent no. 2 had been duly elected, but later in the proceedings, at the time of settlement of issues, this request was withdrawn. It was held that the petitioner could withdraw this claim and that a recriminatory case could be abandoned. (*Halsbury*, vol. XII, page 453, paragraph 882; *Bombay City* 1924, annexure C.) The point was raised that Babu Ram was disqualified to hold the seat as he had not filed any return of his election expenses.

The Commissioners reported :—

“It was contended on behalf of the petitioner that as the other candidates had withdrawn their candidatures, so it was not necessary to add them as respondents to the petition, but we do not think that the above contention has any force. Rule 34¹ provides that the petitioner may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself or any other candidate has been duly elected, in which case he shall join as respondents to his petition all other candidates who were nominated at the election. It was said that the words ‘candidates who were nominated at the election’ in the above rule means the candidates who remained nominated up to the election and not those who had withdrawn. Rule 32² defines ‘candidate’ to mean a person who has been nominated as a candidate at any election or who claims that he has been so nominated or that his name has been improperly refused, and so forth. A candidate who has subsequently withdrawn is clearly a candidate within the meaning of the above definition. We are therefore of opinion that it was necessary for the petitioner when he desired to claim a declaration for the seat for Babu Ram to join the other candidates who had withdrawn also as respondents to the petition, and as he has not done so, the result is that his claim for the seat for Babu Ram cannot stand. We therefore hold that the entire petition cannot be dismissed for the petitioner’s failure to implead the other candidates as respondents, but his relief as to the claiming the seat cannot be granted.

“The statement of Babu Ram shows that he soon after the election was sent to jail under some Ordinance and has not filed his return of election expenses. The question therefore arises as to whether he was bound to file a return of his election expenses. Rule 19(1)³ provides that within 35 days from the date of the publication of the result of an election under sub-rule (9) of rule 14 there shall be lodged with the returning officer in respect of each person who has been nominated as a

¹ Now section 3(2) of part III of the Corrupt Practices and Election Petitions Order, 1936.

² Section 1 *ibid*.

³ Section 5, part II, Corrupt Practices and Election Petitions Order, 1936.

candidate for the election a return of election expenses of such person containing the particulars specified in schedule 4 and signed both by the candidate and his election agent. Rule 22(4) ¹ provides that if in respect of an election to any legislative body constituted under this Act a return of election expenses of any person who has been nominated as a candidate at the election is not lodged within time and in the manner prescribed by or under the rules made on that behalf, neither the candidate nor his election agent shall be eligible for nomination for five years from the date of the election. The above rules show that the persons who are required to file a return of election expenses are persons who have been nominated as candidates at the election. We do not think that the words 'any person who has been nominated as a candidate at the election' include persons whose nominations have been rejected by the returning officer. The word 'candidate' has been defined to mean: (1) a person who has been nominated as a candidate at any election; (2) or who claims that he has been so nominated; (3) or that his nomination has been improperly refused; and (4) includes a person who, when an election is in contemplation, holds himself out as a prospective candidate at such election, provided that he is subsequently nominated as a candidate at such election. The above definition of 'candidate' clearly shows that a person who has been nominated as a candidate at any election does not come within the meaning of a person whose nomination has been improperly refused. A person who has been nominated as a candidate at any election according to the above definition comes within a different category from a person whose nomination has been improperly refused. We are therefore of opinion that the candidates who are required to file a return of election expenses are those candidates who have been nominated as candidates at the election, and not the candidates whose nominations have been improperly refused, and it was therefore not essential for Babu Ram to file his return of election expenses. We therefore hold that Babu Ram did not file a return of election expenses within the specified period and his failure to do so does not, in any way, affect the proceedings.

"In the present case it is, however, manifest that the improper acceptance of the nomination paper of Mr. Amba Prasad and the rejection of the nomination paper of Babu Ram has materially affected the result of the election. We therefore hold that the result of the election has been materially affected by the wrongful acceptance of the nomination papers of Mr. Amba Prasad and the non-acceptance of the nomination paper of Babu Ram.

"Our report, therefore, is that the election of Mr. Amba Prasad to the United Provinces Legislative Council is void, and the claim which was made for Babu Ram for the seat has been abandoned, and as there is also a defect of non-joinder he is not entitled to the seat."

¹ Now section 5 of part IV of Corrupt Practices and Election Petitions Order, 1936.

CASE No. IV

Ahmednagar District (N.-M.R.) 1926

RAO BAHADUR CHITALE AND OTHERS .. *Petitioners,*

versus

MR. FIRODEA AND FOUR OTHERS *Respondents.*

Legitimate canvassing distinguished from undue influence.

An untrue account of an isolated political act does not necessarily come within purview of section 5 of part I of the first schedule of the Corrupt Practices Order, 1936, nor is an imputation on the public conduct of a candidate necessarily excluded.

The distribution of loans from the famine fund to agriculturists could not be regarded as bribery or undue influence.

MR. FIRODEA (respondent no. 1) was elected for the general seat, and Mr. Nirhali (respondent no. 3) for the seat reserved for Mahrattas.

The petition contained charges of treating, of the publication of false statements, personation and undue influence. It was also stated that the respondent's return of election expenses was false in material particulars.

As regards corrupt practices, the Commissioners found that the charges of treating and undue influence were not established. It was proved that four persons came to a polling booth to vote at the request of a canvasser for the petitioner. Two agents working for respondent no. 1 dissuaded them from voting for the petitioner by various arguments. The four voters then said that they would not vote for anybody at all, and went back without voting. In other words these electors when approaching the polling station were beset by canvassers of the different candidates. The Commissioners held that "this amounts to a little more than legitimate canvassing and does not enable us to hold undue influence proved".

In the matter of the publication of false statements, the charge was that the respondent issued by way of reply to a leaflet published on behalf of Rao Bahadur Chitale, a statement purporting to be a summary of the latter's public acts, and in reference to the raising of the local fund cess it said that the idea of raising the cess was entirely his and he had got the resolution raising it passed unanimously; that it must hence be inferred that he also voted for the resolution; that he had not voted against it; and that in these circumstances it was misleading to say that the statement that he had raised the cess was absolutely false; that he had no occasion even to vote for the resolution, etc. etc.

Now admittedly Rao Bahadur Chitale was very keen on introducing compulsory primary education into the district and money had to be found for the purpose. He further admits that he was one of the persons who had originated the proposal to raise the local fund cess. He says he does not remember who the other persons were who had originated the proposal. He also does not remember whether it was he who had suggested to the standing committee the idea of raising the cess. The resolution to raise the cess was put by him before the general board in his capacity of president, and it was unanimously adopted without any formal voting thereon. Upon these facts, we are not prepared to hold that the statement, when we read it as a whole and bear in mind that it was made in reply to the other statement, was false. It was urged that the words in Marathi might have a sinister meaning; that they mean Rao Bahadur Chitale had dominated the will of his colleagues on the board by undue influence and thereby obtained their assent to the resolution. The words however do not necessarily mean this; they can

also be construed to mean that he had by persuasion brought his colleagues round to his views. The only other statement which is relied upon is that Rao Bahadur Chitale "did not vote on the popular side when the question about (the release of) political prisoners was before the Council". This must be held to be an untrue statement, for it is admitted that as a matter of fact Rao Bahadur Chitale had voted in favour of the resolution for the release of political prisoners. No attempt has been made to show that the false statement was made through a *bona fide* mistake. It must therefore be held that the statement was made without believing it to be true. The important question however is whether the statement was made "in relation to the personal character or conduct" of Rao Bahadur Chitale. In a similar case,¹ the Commissioners observed: "No sort of reflection or imputation is cast on the petitioner's character or conduct by the mere assertion that he had voted on a particular measure in a particular way. It is an assertion of a historical fact, a mere setting forth of an account of a political act of the petitioner in his political career. What result that act may have had on the interests of his constituents, whether it will, for instance, be a sacrifice of their interest or not, is not a question of fact, but of opinion, and any statement to that effect is not a statement of fact, but a statement of opinion, and, therefore, will not come within the mischief of the rule." In the present case, also, there was no sort of reflection or imputation on Rao Bahadur Chitale's conduct. What was said was no more than an untrue account of an isolated political act of Rao Bahadur Chitale in his political career. The innuendo that Rao Bahadur Chitale was a pro-Government man or a *jo-hukumwala* was a matter of opinion and not a statement of fact. The statement in question therefore does not in our opinion come within the mischief of rule 4,² part I of schedule V of the election rules. We are also not prepared to hold that the statement in question was reasonably calculated to prejudice Rao Bahadur Chitale's election prospects. On the whole, then the charge of publication of false statements fails. We should not however be understood to hold that we regard imputations on the public conduct of a candidate as necessarily excluded from the purview of the rule. On that vexed question we express no definite opinion except to say that if such imputations are not covered by the rule as it stands it would be desirable to amend it in view of present political conditions in this country.

Exhibits 1-A and 2-A did not bear on their face the name and the address of the printer and publisher thereof, and consequently offended against rule 8 in part II of schedule V.

¹ West Coast and Nilgiris.

² Now section 5 of part I of the first schedule of the Corrupt Practices Order, 1936.

The Commissioners held that personation was proved in six cases. In three the persons whose names were entered on the electoral roll were dead, and in three others the persons who voted from the Sangamner municipal area were proved to have been absent from Sangamner on the day of election. As to who personated these deceased and absent electors there was no evidence.

They found that it was amply proved that these cases of personation were either procured, abetted or connived at by Shivnarayan, the polling agent of respondent no. 1 and that in consequence a corrupt practice coming within rule 4 of part I of schedule V was committed by this agent of Mr. Firodea, and held that the election of the returned candidate was void, as in their opinion a corrupt practice had been committed which brought the case under rule ¹ 44 (1) (b).

Respondent no. 1 filed a recriminatory petition alleging the commission by the petitioner, or his polling agents, canvassers or workers, of almost all the corrupt practices mentioned in schedule V, parts I and II. The Commissioners reported :—

“ We mention this array of corrupt practices not because any evidence was led to substantiate them but rather to illustrate the recklessness and utter absence of that care and caution which one expects from a person of respondent no. 1's status, position and education.

“ The gravamen of this charge is that Rao Bahadur Chitale took undue advantage of his position as chairman of the district famine fund committee by starting the advance of loans to agriculturists in June, 1926, with a view to influence their votes in the coming election, at which he desired to stand as a candidate. The operation of giving relief from the fund had ceased in about October, 1921, and the suggestion is that the chairman, when he contemplated standing as a candidate for the Council election commenced from June, 1926 to curry favour with agriculturist voters by advancing loans to them from the famine fund over which he had control. On being required to do so the Rao Bahadur has produced the list of debtors to whom loans were given. He has also produced as required his correspondence on this subject with the Collector and president of the Ahmednagar famine fund committee.

“ On going through this correspondence we have no hesitation in finding that there was absolutely nothing underhand, irregular or unfair in the conduct of Rao Bahadur Chitale in the administration of this fund. It is an admitted fact that the agriculturists in the Ahmednagar district as a class were in low water last year owing to unfavourable seasons ; and it is quite clear from the correspondence that the Collector on being moved in that behalf by Rao Bahadur Chitale allowed him to

¹ Section 3 of part I of First schedule of Corrupt Practices Order, 1936, and paragraph 7 (1), (b) of part III of the same order in Council.

advance loans from the permanent famine fund to substantial agriculturists. A circular, dated the 18th June, 1926, was issued by the Collector requiring thorough inquiries into the applications sent to them by Rao Bahadur Chitale to ascertain the solvency of the applicants and the soundness and sufficiency of the securities offered by them. No advance of any loan could be made by him unless a recommendation had been received after careful scrutiny as to the applicant's security and solvency. No doubt the Rao Bahadur could perhaps have done this on his own responsibility as this had been the mode of giving relief in previous years. In his letter to the Collector, dated the 10th May, 1926, he writes, 'of course I could do this on my own responsibility, but I have been always acting under the advice of the Collector, who as head of the district is of course in touch with the distressing conditions prevailing in the district.' We consider Mr. Firodea's allegations in this respect most reprehensible inasmuch as he was himself a member of the managing committee of the fund and could easily have obtained any information he wanted from authentic sources. He was himself going to stand as a candidate along with the Rao Bahadur, and though he knew that these loans were being advanced from June or July, 1926, he never complained to the Collector and the returning officer on the subject; he never approached the chairman to obtain information about these loans or about the administration of the fund. He admits he saw Mr. Bhide the Collector but never asked him whether the loans were made with his consent. He says he learnt about the end of September, 1926 that these loans were having an adverse influence on voters as regards his candidature and yet never informed the returning officer. Perhaps he fancied that this undue influence on the agriculturist voters was being sufficiently counteracted by the statement in the leaflet exhibit 1-A in the original petition that this gentleman who posed as their friend was the *fons et origo* of the increase in their local fund and irrigation cesses.

"It was argued that these loans were gratifications given to voters with the object of directly or indirectly inducing them to vote for the petitioner. As a matter of fact the loans were not advanced by the chairman personally from his own purse—but he was simply performing the ordinary duties of the chairman of the famine fund committee. We think there is no merit whatsoever in this contention, and it only emphasizes the recklessness with which the recriminator makes the most serious allegations against the conduct of his opponent without a shred of evidence to base them on. We find there is no bribery and no undue influence in what he has alleged and that therefore the charge of this corrupt practice fails."

The election was declared void.

CASE No. V

Akola South (N.-M.R.) 1924

(CENTRAL PROVINCES LEGISLATIVE COUNCIL.)

MR. DINKAR RAO DHAR RAO NAIK RAJURKAR *Petitioner,*

versus

MR. JANARDAN BHALCHANDRA SANE .. *Respondent.*

Though it would be better if the returning officer remained in his public office at the *kacheri* for the purpose of receiving nomination papers, his private office is within the meaning of the electoral rules " the office ".

The burden of proving interference with the voters to such an extent as materially to affect the result of the election rests on the petitioner. Absence of evidence of those who were influenced against the petitioner, and the fact that no complaint was made to the presiding officer, regarded as important omission.

THE substance of the petition is that the election of Mr. J. B. Sane by a majority of 43 votes was procured upon an invalidly presented nomination paper, by the threats of Mr. Vipayakrao Gokhale, Pleader of Basim, improper interference with the freedom of election by Mr. Ganu, the Akola Superintendent of Land Records, and official pressure of some patwaris and revenue inspectors.

The complaint about the nomination paper is that it was presented at 3 P.M. and not before 3 P.M. on November 20th, 1923, and it was presented to the returning officer at his bungalow which is not a presentation at his office within the meaning of the rules. The alleged threat by Mr. Gokhale, pleader, is that on the polling day at Basim, just outside the polling station, he declared that those who voted for the Maratha candidate would have to seek Maratha pleaders as their legal advisers, as the Brahmin pleaders of Basim would not work for them. The petitioner was recognised as the Maratha candidate, and this threat is said to amount to a corrupt practice that has vitiated and materially affected the election. The interference by Mr. Ganu is that he toured in the vicinity of Givha where he was appointed presiding officer for the election and urged the people to vote for Mr. Sane, and on the polling day he attempted to persuade voters to vote for Mr. Sane, using his official position and influence. He also improperly refused voting papers to certain persons who were on the list of voters. The complaint about patwaris and revenue inspectors was that one Renukadas, patwari, who was appointed assistant polling officer at Givha, threatened his official displeasure against those who did not vote for Mr. Sane.

The first question of importance is whether the nomination paper was presented within time. It has been urged for the petitioner that the endorsement of the returning officer itself shows that the paper was presented at 3 P.M. and not before 3 P.M. Rule 10(3), however, does not use the words "before 3 P.M." It directs that the nomination paper shall be presented to the returning officer "between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon". Any time infinitesimally short of 3 P.M. would be within the scheduled time, and therefore a presentation "at 3 P.M." is within time. Moreover, the petitioner himself has filed as his own evidence a copy of the order of the returning officer (who is in England and could not be called as a witness) which runs thus: "Pandit J. B. Sane brought his nomination paper to the district officer a little before 3 P.M. on the 20th and found that I had left the office for the bungalow. He brought his nomination paper to my bungalow and gave it to me in my office room there within the statutory hours." Thus from the petitioner's own evidence the presentation was within time. Further the Commissioners unanimously agree in accepting the sworn testimony of Mr. J. B. Sane, that he went to the *Kacheri* of

the Deputy Commissioner at 12-45 and waited till about 2-30 P.M. and then, on making enquiry and learning that the Deputy Commissioner had left word that candidates should be sent to his bungalow, went there and handed the papers to the returning officer 10 or 12 minutes before 3 P.M. That officer perused the papers and referred to the rules before signing the delivery endorsement and noting the time of signing which was just 3 o'clock. The Commissioners have no hesitation in holding that the papers were delivered to the returning officer within the statutory time. They would, however, like to observe that the words "date and hour" in the printed certificate of delivery are vague, and should, in their opinion, be changed to "date and time".

The next question is the one that has given rise to much discussion, viz. whether the presentation at the bungalow of the Deputy Commissioner is a proper and sufficient presentation within the rules. It has been strenuously contended that rule 10 does not prescribe any place for the presentation, and therefore the delivery to the returning officer in his office room at the bungalow complies with the rule. Against this it is urged that rule 10(3) must be read with the form of nomination given in schedule III which shows that the presentation must be at the office, and that office is the same building as is mentioned in clauses (7) and (9) of rule 10.

The Commissioners have considered this vexed question, and have decided that the presentation at the bungalow does comply with the rule. At first sight it appears that the footnote on the nomination form goes beyond clause (6) of rule 10 and is *ultra vires* in inserting the words "at his office", but a further consideration shows that this is not so. Clause (6) rejects all nomination papers presented after 3 P.M. on the last day fixed for presentation; but it cannot be assumed conversely that all papers received before that time must be accepted, as that would conflict with clause (3) which prescribes that the presentation must be between 11 A.M. and 3 P.M. Nomination papers can be rejected on other grounds and the footnote to the nomination form is an indication that such papers will be invalid unless presented at the office. The place of presentation, therefore, becomes important. We are of opinion that the whole form of nomination must be read as a part of rule 10(3). The full meaning of this clause cannot be ascertained without a reference to the form. The clause is incomplete without the form itself. Then when the form is read, it is found to contain a clear direction as to the place of presentation. Twice it is mentioned that the delivery must be at the office of the returning officer, and that direction cannot be excluded from the rule or disregarded by the candidate. The question then arises whether the office room in the bungalow is an office of the returning officer for the purpose of such presentation. The word "office" has never, so far as we are aware, been judicially defined; but we are of opinion that in

this particular case we have sufficient material for a decision. The schedule in regulation III under rule 14 shows that the returning officer is the Deputy Commissioner (*ex-officio*) and we conclude that the office of the returning officer is the office of the Deputy Commissioner as such. Now undoubtedly *prima facie* the office of the Deputy Commissioner is the building known as the *Kacheri* where the courts are held and general administrative work of the district is conducted. But we have clear evidence, which we find satisfactory, that this particular Deputy Commissioner ordinarily did his work in the *Kacheri* until about 2 P.M. daily and did the rest of his work in the office of his bungalow from 2 P.M. onward. This custom was well known to the members of the Bar and the litigant public. Thus by custom there were two offices with fairly well-defined times. Moreover, we have evidence that the returning officer had left specific instructions that any candidate bringing nomination papers should be sent to the bungalow. Hence, although we feel that it would certainly have been better if the returning officer had remained in his *Kacheri* on those days until 3 P.M., we consider that the nomination papers of Mr. Sane were delivered to the returning officer "at his office" within the meaning of the rules.

We find that the nomination papers were delivered before 3 P.M. on November 20th, and they were validly presented in compliance with the rules. There was no improper presentation or acceptance.

The witnesses who speak of the alleged interference by Mr. V. V. Gokhale, pleader, who was admittedly the polling agent of Mr. Sane, are nos. 1, 11 to 16 for the petitioner and nos. 1, 3, 5 for the respondent. The burden of proving the allegations lies upon the petitioner and it is our unanimous opinion that he has failed to discharge it. The evidence is very discrepant and the witnesses are all partisans.

A very singular feature of the evidence is that none of the persons, who are said to have been influenced against the petitioner, have been examined as witnesses. Those who have come forward say vaguely that many persons went away and did not vote. They are not able to give the number of such persons or their names, nor even to say whether they were voters or mere spectators. Even Punjaji himself as A.W. 16 cannot name any of those voters who are said to have been driven away by the remarks of Mr. Gokhale, although he claims them as his acquaintances. The witnesses who speak on this issue, with the exception of A.W. 11 and 13, who have been completely discredited, all voted for the petitioner. There is, therefore, nothing whatever to show that anything was said that influenced the election in any way. And another circumstance which cannot be disregarded is that no complaint was made to the presiding officer or the returning officer. If it had been a fact that Mr. Gokhale had been interfering with the freedom of election in the manner alleged by the petitioner he would naturally have informed the

Sub-Divisional Officer who was presiding officer and whose duty it was to stop any such interference. Or, if that opportunity of protest had been allowed to pass, the petitioner would have mentioned the occurrence at the time of counting, if he felt aggrieved. All this points to the conclusion that this is an after-thought based perhaps upon some very trivial incident that had no effect in reality.

Our finding is that the alleged interference has not been established. We find that there was no corrupt practice.

Three charges are brought against Mr. Ganu, the superintendent of land records—(1) an endeavour to persuade persons to vote for Sane during his touring on December 2nd to 5th, (2) an attempt to induce voters similarly while acting as presiding officer at Givha, (3) a refusal to allow certain persons to vote.

This last charge, vaguely stated in the petition to apply to "certain voters" and to have "materially affected the election", is whittled down in pleadings to two persons, Govinda and Daryaji. The former is A.W. 8, whose deposition in our opinion, shows that he never went near the place of polling and is ignorant of the procedure. Ganu as respondent's witness no. 4 admits that he refused to give Daryaji a voting paper, but gives a satisfactory reason. This man did not fully tally with the description in the voter's list and he was asked to bring some one to identify him. Renukadas as R.W. 6 corroborates this. The objection was that Daryaji admitted that he was not the working Patel. Ganu says that this raised in his mind a *bona fide* suspicion as to the man's identity and he asked for some one to remove the doubt. R.W. 6 corroborates this. But even if this were not a justifiable refusal, it cannot be held that the whole election was thereby materially affected by the refusal of one vote.

[The Commissioners found that the evidence did not establish the allegation that Ganu was deliberately interfering with the election during his touring on the four days preceding the polling. They add]:—

"Then we come to the alleged interference at the time of polling. Here we again meet the significant fact that all these witnesses who speak of threats, inducements and coercion, actually voted for Dinkar Rao as they had always intended to do. As regards Surybhan A.W. 4 we are of opinion that this man probably intended to vote for Sane as he did in fact, although he is reluctant to admit it in court in the presence of Dinkar Rao and so makes his rambling statement about not knowing in what box he put his paper, although he was specially told that Dinkar Rao's box was red. But even if this man's vote was changed on account of something said by Ganu, this could not be said to have materially affected the election. It is quite possible that he wanted to vote for Dinkar Rao, and put the paper in the wrong box by mistake as he says

he did vote for Dinkar Rao. The truth cannot be ascertained and the Commissioners do not feel able to rely upon this man's deposition.

Such is the evidence on this supposed interference at the time of polling. Not one of these voted, for Sane, but all for the petitioner. Thus if Ganu said anything at all it had not the least effect. It is quite probable, and this he admits, that when voters appeared confused and not knowing what to do he directed them to the boxes and told them what to do. It is even possible that he asked some of them for whom they wanted to vote and then gave directions as to the boxes. Dealing with illiterate villagers is not the same thing as conducting an election in a big town. The Commissioners are not satisfied that this evidence is sufficiently reliable to establish any direct interference by Ganu, and are quite convinced that any such advice as may have been given failed to change the election in the very least. It is noteworthy that the petitioner's own polling agent Dajibarao, who is said to have been there all the time, has not been called as witness. Also no complaint seems to have been made to him about Ganu interfering. What Ganu did raised no protest at the time. Further it is noted that not one of the several patwaris and patels, who were in the courtyard within a few feet of Ganu, all the time, had been called. So also not one of the three schoolmasters, who were specially appointed as clerks for the polling, was examined as witnesses. Two of these were not Brahmins. When the petitioner omits to call the uninterested persons who were on the spot all the time and prefers to rely upon biased adherents of his own cause, he must not be surprised if adverse inferences are drawn against him.

The Commissioners are unanimous in their opinion that no grounds have been established for declaring the election of Mr. J. B. Sane void, and the petition should be dismissed with full costs on the petitioner, allowing as pleaders' fees the sum of Rs. 350 (three hundred and fifty rupees). They accordingly humbly submit their report to His Excellency the Governor for his orders under rule 40 of the Berar electoral rules."

CASE No. VI

Akyab (Indian Urban) 1928

(BURMA LEGISLATIVE COUNCIL.)

MR. S. MAHMUD *Petitioner,*

versus

MR. R. K. GHOSE AND ONE *Respondents.*

Particulars of charges can only be amended by amplification or the giving of further details. Where a petition gives no instances or particulars of a charge, these cannot be furnished later and no evidence can be adduced on it.

Rulings in *Attock*, *Bulandshahr East*, *Kangra*, *Amritsur*, *Kistna*, *Bombay*, and *Saharanpur* discussed.

THIS petition is by Mr. S. Mahmud, one of the unsuccessful candidates for the Akyab Indian urban constituency at the recent election of November 2nd, 1928, against the successful candidate, the first respondent, Mr. R. K. Ghose, and another candidate, Mr. H. Guha, who has made no appearance. Mr. Ghose obtained 1,313 votes, the petitioner 698 votes, and Mr. Guha 69 votes. The petition was on the grounds of bribery, treating, personation, publication of false statements, the hiring of public conveyances, the issue of circulars without the publishers' and printers' names and addresses, and the submission of a false return of election expenses. The petitioner claimed the seat.

In our order, annexure A, the charges of bribery were struck out for lack of sufficient particulars, while some other charges or parts of them were abandoned. The circulars and placards in question were subsequently received, and were found not to be printed matter.

On the day fixed for the trial of the petition, the petitioner did not appear. He had made no application for the issue of summonses for his witnesses, and the additional security for costs ordered had not been furnished by him.

The petition must be dismissed for default.

We find that the respondent, Mr. R. K. Ghose, has been duly elected, and we recommend that the petitioner pay him the costs of this petition, which we assess at Rs. 450.

[ANNEXURE A]

The list of particulars, paragraph IV (1) annexed to the petition, states that the respondent paid bribes to "the electors" of five named wards in Akyab town.

The petitioner asks at this, the preliminary hearing, to be allowed to furnish at a later date further particulars of the sums paid, the dates and places of payment, the names of the respondent's agents employed by him to make the payments, the dates and places of the payments to them, and the names of the recipients.

Rule 33(1) enacts that the petition shall contain a concise statement of the material facts relied on. It shall be accompanied [sub-section (2)] by a list setting forth full particulars of any corrupt practice alleged, including as full a statement as possible as to the names of the parties alleged to have committed any corrupt practice, and the date and place of its commission. Sub-section (3) provides that the Commissioners may at any time allow the particulars included in the said list to be amended, or order further and better particulars to be furnished.

The question of amendment of particulars has been discussed in several reported election enquiries. It has arisen under two closely similar forms :—

- (1) Where a vague or general charge has been made in the petition, and it is subsequently sought to amend it by giving particular instances ; and
- (2) Where instances have been given in the petition, and it is sought to give evidence of other instances of the same sort.

As to the first of these kinds the *Attock* case,¹ merely allowed some elucidation of particulars.

In the *Lahore* case (see page 469), intimidation by “ certain spiritual leaders ” was alleged, and particulars of the names were allowed to be given later. This case however and the other cases, were decided under the electoral rules of 1920, where rule 31 (equals the present rule 33) contained no provision corresponding to the present sub-section (2) of rule 33, which requires a list of particulars with names and dates and details of the corrupt practices alleged.

The *Bulandshahr East* case (see page 219), the *Saharanpur* case (see page 623), and the *Kangra* case (see page 439), quote with approval and follow the remarks in the *Worcester* case given at page 154, Hammond’s Indian Candidate edition of 1920 (not reproduced in the 1923 edition) : “ To deliver particulars with nothing but the name of the candidate and the character of the offence, leave everything else in blank, and attempt to fish out some possible materials from which the blank may be filled up is an abuse of procedure.”

In the case before us we have of course only the character of the offence, the name of the respondent, and the names of five wards of the town, and everything else is left blank. It cannot be said that any attempt has been made to give full particulars.

As to the second kind, in the *Amritsar* case (see page 85), the petition vaguely alleged a large number of personations, and gave one instance only in the particulars. On an application to add fresh instances it was held that only the particulars included in the list could be amended, and that it would be straining the language of the rule to hold that the word particulars includes fresh instances of a similar kind.

The *Rangoon West* case,² is to the same effect. On the other hand it was held in the *Bombay* case (see page 178), that the addition of further instances of the same charge did not mean a fresh charge, but was merely an amendment of the particulars of the corrupt practice already alleged, and could therefore be allowed.

¹ I.E.P. I, 12.

² I.E.P. III, 244.

This not merely ignores the wording of rule 33(3), as is pointed out in the *Kistna* case (see page 450), but also the fact that each single instance of corrupt practices alleged is a substantive charge. It may be at a different time and place and involve different persons. It may be sufficient in itself to vitiate an election.

The general principle in England is that no amendment is allowed after the lapse of a prescribed time which would amount to constituting a new petition.

In the *Kistna* case (see page 447), there was a general charge of corruptly employing board servants, and it was ruled that a specific instance could not later be added.

We agree with the decision in that case, and with the remarks that what was sought was the amendment of the *list of particulars* by adding to them, while the rule only allowed amendment of the *particulars in the list* (already) by *amplification* or the giving of further details.

There is then a great preponderance of opinion that fresh instances of a similar kind cannot be given, and that where the petition gives no instances or particulars of a charge, these cannot be furnished later, and no evidence can be adduced on it.

We would agree that this is so, and are in accord with the remarks made on the subject in the *Bulandshahr East*, *Amritsar* and *Kistna* cases.

There is something more to be said on the merits of the present application, apart from the interpretation of the rules.

The petitioner's application for permission to give further particulars has been made orally. He is not represented by an advocate, and has filed no affidavits. We have examined him as to the cause of delay in making his application at this late stage, some three and a half months after the petition was filed.

It would appear from his statement that he knew of part of the particulars which he proposes to give at the time he filed the petition, and purposely suppressed them as he did not think that he could prove them.

As to the rest he has not attempted to show that he could not have discovered them with due diligence and skill when the original petition was filed, and in fact he is not ready with a large part yet, and asks for further time at this stage of the proceedings.

The application to file further particulars is rejected, and paragraph JV (1) of the particulars will be struck out.

CASE No. VII
Akyab West (General Rural) 1928
(BURMA LEGISLATIVE COUNCIL.)

MR. E. G. MARACAN *Petitioner,*

versus

U THA BAN, K.S.M. *Respondent.*

It is not sufficient to prove irregularities at an election. It must be proved that they did actually materially affect the result of the election.

THE petitioner, Mr. E. G. Maracan, was defeated by the respondent, U Tha Ban, K.S.M., in the Akyab West rural constituency election by a majority of 4,287 votes.

He claimed that the result of the election had been materially affected by non-compliance in two instances with the regulations made under the Act, and that the election of the returned candidate was consequently void.

The first instance alleged is that the presiding officer at the Alethangyaw polling booth closed it at 4 P.M., and so prevented "over" 2,500 Muhammadans from voting who would have voted for the petitioner.

Paragraph 28 of the Burma electoral regulations provides that the poll should be kept open until 6 P.M.

The second instance relied on is that the presiding officer at the Zadibyin booth broke open the seals of both the ballot-boxes after the poll was closed, and after counting the tokens in each re-sealed them.

The procedure to be adopted is contained in regulation 38, which read with rule 46 *et seq.* obviously does not contemplate any such action by the presiding officer, whatever dispute may arise.

The respondent in his written statement said that the poll at Alethangyaw was closed at about 5 P.M., owing to a riot which was started by the Muhammadans.

The incident at Zadibyin was admitted. It is said that the boxes were unsealed and the tokens counted in the presence of the agents of both sides, and that this was done because there was some dispute about one vote.

It is admitted that the figures in the voting return are correct, and from these it appears that 573 tokens were found in the ballot-box, while the presiding officer had issued 574 tokens. Of these votes, 545 had been cast for the respondent and 28 only for the petitioner.

The petitioner's advocate did not wish to cite any evidence on the Alethangyaw incident even as to the numbers of voters affected. It might be remarked that it is highly improbable that at so late an hour so large a number of voters could have been denied the opportunity of voting.

It is obvious that the number of votes affected by both incidents, assuming that all the votes at Zadibyin were affected, 2,500 *plus* 573, or in all 3,073 votes is far less than the majority gained by the respondent.

At a preliminary hearing the petitioner was asked to show why the case should not be decided on the pleadings.

His argument was that an irregularity of the kind that occurred at Zadibyin vitiated the whole election, but he could adduce nothing to support such a contention. An irregularity in the nomination paper stands of course on a different footing.

On the incident at Alethangyaw the petitioner's advocate quotes the *Champaran North* case (see page 303), where it was remarked in a case where the majority was only 122, and no less than 515 persons out of a total of 1,731 were prevented from effectively recording their votes, that the Commissioners were of opinion that it would be wrong to allow the election to stand. In that case if the votes irregularly recorded had been rejected the petitioner would actually have obtained a majority.

That case bears no analogy to the present one. The law on the subject is quite clear. The petitioner must show that the irregularities complained of did actually materially affect the result of the election. Here it is clear that they did not do so, and it is not even conceivable that they might have done so.

Nor is it the case that a majority of the electors were prevented from recording their votes effectively (see *Woodward vs. Sarson*, appendix II, page 731).

The petition must therefore be dismissed. We find that the returned candidate, U Tha Ban, K.S.M., has been duly elected, and we recommend that the petitioner shall pay the costs of this petition, which we assess at Rs. 255, to the respondent.

CASE No. VIII

Aligarh District East (N.-M.R.) 1923

(UNITED PROVINCES LEGISLATIVE COUNCIL.)

THAKUR UDAYA VIR SINGH *Petitioner,*

versus

RAJ KUMAR SINGH *Respondent.*

Trivial misdescription in a nomination paper should be condoned. If the mistake misleads nobody and causes no misgiving in the mind of the returning officer as to identity, the nomination paper should not be rejected.

The entry of age in a horoscope supported by documents in the handwriting of persons who are dead held sufficient to rebut the entry regarding age in a school register.

THE petitioner Thakur Udaya Vir Singh was a candidate for election to the United Provinces Legislative Council from the Aligarh District East non-Muhammadan rural constituency. In the space for the name of the constituency in all his nine nomination papers the petitioner had put down "Aligarh East non-Muhammadan rural". The returning officer on 7th November, 1923, rejected the petitioner's nomination papers by the following order :—

"Declared invalid as the name of the constituency has not been correctly given. It should be 'Aligarh District (East) non-Muhammadan rural'. There is no such constituency as 'Aligarh East'. This is a technical matter in which I hold that absolute accuracy is essential." The petitioner urges that this invalidation by the returning officer was improper. •

Besides the petitioner there were two other candidates for the same constituency, viz. Kunwar Raj Kumar Singh of Barauli and Pandit Basdeo Sahai of Gangiri. The nomination paper of Pandit Basdeo Sahai Sharma was also rejected.

The nomination papers of Thakur Udaya Vir Singh and Pandit Basdeo Sahai Sharma having been rejected by the returning officer, Kunwar Raj Kumar Singh was returned unopposed as a member of the Legislative Council. His election has been called in question by Thakur Udaya Vir Singh on the grounds specified in his election petition, of which the main one is that Raj Kumar Singh was under 25 years of age on the day of his nomination. Basdeo Sahai Sharma has been joined as a formal respondent. The petitioner has claimed the seat for himself.

We are of opinion that the refusal of the petitioner's nomination by the returning officer was not justified. The abbreviation of the name of the constituency by the omission of the word "District" should have caused no misgiving in the mind of the returning officer as to the identity of the constituency, because there was no other constituency of a similar name with which "Aligarh East" could have been confounded. In fact, on the 6th November, the returning officer had posted on the notice board in front of his office the names of the nominated candidates and their constituencies, including that of the petitioner as a candidate for the Aligarh District (East) non-Muhammadan rural constituency. Raj Kumar Singh, respondent no. 1, himself described the constituency in question as "Aligarh East" in his nomination paper exhibit 1(b) and his declaration of the appointment of his election agent on the back of the nomination paper exhibit 1(a). We find that in some provinces, the word "District" is used after the names of the district constituencies, while on others it is not. In the *United Provinces Gazette* of the 24th November, 1923 (part VIII), page 632, the two non-Muhammadan rural constituencies of Bulandshahr district are described

as simply "Bulandshahr (East)" and "Bulandshahr (West)". Nor is the word "District" added to the names of any of the district constituencies therein mentioned. In the *United Provinces Gazette*, dated the 5th of January, 1924 (part I), page 18, the constituency of Meerut District North is described simply as "Meerut North". If this not inconvenient abbreviation of the name of a constituency as created by statutory rules is permissible in official publications, too strict a view of the omission of the word "District" by the returning officer was not justified. The misdescription was trivial and should have been condoned. It was a mere mistake in the use of a form which could mislead nobody. This is the principle underlying the English Ballot Act.

It was conceded by the learned counsel for the respondent no. 1 that the question of the latter's age could be raised before us even though no objection to his age was taken before the returning officer.

The objections set out in paragraph 12 of the petition are (a) that respondent no. 1 was under 25 years of age, (b) that he was not the adopted son of Rao Karan Singh, (c) that he had differently given his parentage in different nomination papers, and (d) that his nomination was not according to rules. With the question of the respondent's adoption we are not here concerned so long as there is no dispute about his identity. Nor does it matter whether he described himself as the adopted son of Rao Karan Singh in one nomination paper, or as the son of his natural father Balwant Singh in another. At least one of his nomination papers exhibit 1-A, in which he has described himself as the adopted son of Rao Karan Singh, is valid.

The only other important question to consider is whether Raj Kumar Singh was under 25 years of age on the date of his nomination, which was one of the grounds of the written objection of respondent no. 2 before the returning officer.

According to the scholars' register exhibit 5, Raj Kumar Singh was admitted to the Aligarh branch school on the 14th of December, 1906, when his age was put down as "eight years". He was admitted to the Aligarh district school on the 8th of July, 1908, according to the scholars' register exhibit 4, and his age was then recorded as 9 years 6 months and 24 days. According to this he would be 24 years 10 months and 22 days (i.e. less than 25 years) on the 5th of November, 1923, which was the nomination day. This calculation is evidently based on the assumption that the respondent was exactly eight years old on the 14th of December, 1906. The petitioner relies on the entry of the age of respondent no. 1 in the scholars' register exhibit 4, which he says he inspected on the 7th of November, 1923.

The petitioner has also summoned the record of the year 1917 in which Raj Kumar Singh on the 4th February, 1918, gave his approximate age as 19.

After discussing the evidence the Commissioners reported :—

We are of opinion that the evidence produced by respondent no. 1 has sufficiently rebutted the entry in the scholars' register exhibit 4 about the age of Raj Kumar Singh, which was based on the entry in the branch school scholars' register and therefore cannot be held to be accurate. The horoscope exhibit B1 and at least two varashphals are in the handwriting of persons who are dead and these documents could not have been manufactured for the purposes of this case. According to the horoscope, and this is confirmed by the 10 varashphals produced by respondent no. 1, he was born on the 18th of November, 1896, and he was therefore above 26 years of age on the date of his nomination, i.e. the 5th of November, 1923. We hold that Kunwar Raj Kumar Singh was duly qualified for election.

It follows from what has been said above that the acceptance of the nomination of respondent no. 1 was not improper, but the refusal of the nomination of the petitioner was improper. It is clear that the election of respondent no. 1 was materially affected by the improper refusal of the petitioner's nomination.

We, therefore, recommend to His Excellency the Governor that the election of Kunwar Raj Kumar Singh should be held to be void. The petitioner has succeeded on one issue, but failed on the issue about the age of respondent no. 1.

In the special circumstances of the case we recommend that the parties do bear their own costs.

CASE No. IX

Aligarh District West (N.-M.R.) 1923

(UNITED PROVINCES LEGISLATIVE COUNCIL.)

THAKUR SHIB NARAYAN SINGH *Petitioner,*

versus

THAKUR LAKSHMI RAJ SINGH *Respondent.*

Where there is doubt as to the spelling of the name of a candidate, proposer or seconder, the returning officer should hold a summary enquiry. Absolute literal accuracy is not essential. The description should be such as is "commonly understood".

Evidence of age in school register accepted in preference to that given in a horoscope.

THE petitioner Thakur Shib Narayan Singh and the respondent Thakur Lakshmi Raj Singh were the only two candidates for election to the United Provinces Legislative Council from the Aligarh District (West) rural non-Muhammadan constituency at the last general election. The petitioner was nominated by means of three nomination papers, but on the day of the scrutiny, the 7th of November, 1923, all these three nomination papers were declared invalid by the returning officer on the following grounds :—

- (a) "As the name of his proposer given as 'Bhawani Shanker' does not agree with the electoral roll where the name is given as 'Bhamani Shankar'.
- (b) "That the age has not been properly given. Only '41' has been written, and the word 'years' has been omitted. This is a technical matter in which I hold that absolute accuracy is essential. I am not entitled to make any presumption whatsoever as what is correctly intended.
- (c) "As the name of the proposer given as 'Lajja' does not agree with the electoral roll, where the name 'Lajia' is given. These are two different names."

The petitioner had taken an objection before the returning officer as to the age of the respondent, alleging that Thakur Lakshmi Raj Singh was under 25 years of age on the day of his nomination and as such was ineligible for election, but the returning officer overruled this objection and declared the nomination of the respondent to be valid. Thus Thakur Lakshmi Raj Singh, being the only validly nominated candidate, was returned unopposed.

On the pleadings of the parties the following two issues were framed by us :—

- (1) Was the invalidation of the petitioner's nomination by the returning officer improper ?
- (2) Was the respondent ineligible as a candidate owing to the fact that he was under 25 years of age on the 5th of November, 1923 ?

Issue 1.—The petitioner's nomination papers are exhibited as exhibits 1, 2 and 3.

In exhibit 1 the name of the proposer is signed "Bhawani Shankar" and his electoral roll number is given as no. 1752. The electoral roll in Aligarh is prepared in both Urdu and Hindi. The election officer Babu Mahadeo Prasad has stated that "in this district we have been acting upon the electoral roll in Urdu and not on that in Hindi". He admitted, however, that there was no Government order which preferred the Urdu to the Hindi copy of the electoral roll and we can see no ground

for preferring one to the other. The returning officer looked up the Urdu copy of the electoral roll and found that the name given against no. 1759 was "Bhamani Shankar". In consequence of this disagreement with the signature of the proposer^f he declared the nomination invalid. If, however, he had looked at the Hindi electoral roll he would have found that the name there given against no. 1752 was "Bhawani Shankar", i.e. the exact name given by the proposer in nomination paper exhibit 1.

We have been referred to and taken through a number of English decisions on questions cognate to the point which we have before us. These are, however, anterior to and have doubtless been considered in, the Indian electoral law, and we see no necessity in this case to travel beyond the Indian rules, which are clear and full.

Regulation 9 made under rule 13(1) of the United Provinces electoral rules and printed on page 3 of the *United Provinces Gazette*, Extraordinary, dated the 4th July, 1923, sets out the grounds on which the returning officer may refuse any nomination. Among them are :

Nine (i) (ii) that the name of a proposer or seconder is not entered on the electoral roll of the constituency, and 9 (i) (iv), that the candidate or any proposer or seconder is not identical with the person whose electoral number is given in the nomination paper as the number of such candidate, proposer or seconder as the case may be.

Rule 9(i) further contemplates the refusal of a nomination after such summary inquiry as the returning officer thinks necessary.

It needed a very summary inquiry, if any, in this case to satisfy the returning officer that the proposer on exhibit 1, was identical with the person shown in the electoral roll against the corresponding number. A mere reference to the Hindi electoral roll would have set the matter at rest.

The insistence by the returning officer on absolute literal accuracy was overdone. The object to be kept in view in filling up the nomination paper is "that a person who sees the nomination paper may be able to decide whether the candidate is properly nominated or assented to by enrolled burgesses and to determine this by a mere comparison of the nomination paper and burgess roll without any further and laborious inquiry". (*Moorhouse vs. Linney*, XV, Q.B.D., 1885.)

It is further laid down in the English Act, 45 and 46 Victoria C. 50, on a cognate subject that no inaccurate description of any person should hinder the operation of the Act, with respect to that person provided the description be such as to be *commonly understood* (*ibid.*). It is the misleading of the electorate that is to be avoided.

We think that the nomination paper exhibit 1, satisfies the principles above enumerated. Even if the fact that the name of the proposer is given in the Hindi electoral roll in the same form as in the nomination paper be ignored, we are of opinion that the writing of the proposer's

name as " Bhawani " could have misled no one as to his identity. It was, doubtless within the returning officer's knowledge that " Bhawani " and " Bhamani " are interchangeable renderings of one and the same name. Such interchange of letters in words is quite a common feature in this province and is in keeping with philological rules.

We, therefore, find that the returning officer improperly declared the nomination paper exhibit 1 to be invalid. We hold that it was valid.

Issue 2.—The next question to consider is the age of the respondent on the date of his nomination, i.e. the 5th of November, 1923. The petitioner relies on the entry of the respondent's age in the scholars' register of the Government High School exhibit 13 in which the date of birth of Kunwar Lakshmi Raj Singh is recorded as the 4th of March, 1899.

We are not impressed by the respondent's evidence about his age. The horoscope exhibit A has not the appearance of an old document prepared in 1954 and the Isht from which it was prepared by Pandit Chheda Lal is not forthcoming. It is admitted that a horoscope can be prepared from any given Isht. The respondent's mother was not examined to prove the date of her son's birth, or that the horoscope exhibit A had remained in her possession and that she gave it to her son to be produced in court. The evidence of Subedar-Major Rukam Singh and the respondent's granduncle Thakur Karan Singh is not convincing. On the other hand, there is an unimpeachable entry of the date of the birth of the respondent in the scholars' register of the Government High School and this entry was made at the instance of the respondent's grandfather and in his presence. We are of opinion that the entry of the age of the respondent in the school register has not been rebutted by the evidence produced by the respondent. We find that the respondent's age was 24 years 8 months and 1 day on the 5th of November, 1923, i.e. under 25 years on the day of his nomination, and that he was ineligible for election under rule 5 (1) (f) of the United Provinces electoral rules. We have found that Thakur Shib Narayan Singh's nomination was improperly refused. He was thus the only duly qualified and validly nominated candidate for election to the Legislative Council for the Aligarh District (West) rural non-Muhammadan constituency. We, therefore, recommend to His Excellency the Governor that the election of Thakur Lakshmi Raj Singh should be held void ; that the petitioner Thakur Shib Narayan Singh should be declared to be duly elected as a member of the United Provinces Legislative Council, and that the respondent should pay the petitioner's costs amounting to Rs. 40-8-0.

CASE No. X

Aligarh, Muttra and Agra Districts (M.R.) 1923

(UNITED PROVINCES LEGISLATIVE COUNCIL.)

MOHAMMAD ABDUL WAHAB *Petitioner,*

versus

OBEDUR RAHMAN KHAN *Respondent.*

A commission of enquiry is not competent to enquire into the question of proper presentation of the petition subsequent to its admission by the Governor.

It is not necessary for a candidate to give the date when he signs his nomination paper.

At the election of 1923 for the United Provinces Legislative Council, Mohammad Abdul Wahab and Obedur Rahman Khan were candidates for the Aligarh, Muttra and Agra districts (Muhammadan rural) constituency. The nomination of Mohammad Abdul Wahab was refused by the returning officer on the ground that his declaration on the nomination paper assenting to his nomination was not dated by himself but by some other person. The respondent Obedur Rahman Khan (being the only other candidate) was accordingly returned unopposed. This is a petition filed by Mohammad Abdul Wahab.

In his written reply the respondent has challenged the validity of the petitioner's nomination, and the question arose at the outset whether he was entitled to do this seeing that there is no recriminatory petition under rule 42 of the electoral rules before us. Respondent's counsel relied on order 21, rule 22, Civil Procedure Code in support of his position. We are of opinion that we cannot apply that provision in this case. We are bound to adapt our procedure to that laid down in the Civil Procedure Code "as nearly as may be", but election law is special law and section 42 of the electoral rules has set out distinctly the conditions under which a recriminatory petition is permissible, viz. when the petitioner claims the seat for himself. In no other case is recrimination contemplated. Nor, indeed, would there be any useful object in making an inquiry into the qualification for candidature of a person who does not claim the seat for himself. Our business is confined in a case like the present one to the question whether the respondent has been properly elected.

We, therefore, think that the analogy of order 21, rule 22 is not a real one, and that the respondent's objection to the validity of the petitioner's nomination must be ignored.

Apart from this the pleadings of the parties disclosed the following two issues :—

- (1) Was the invalidation of the petitioner's nomination paper by the returning officer improper ?
- (2) Was the election petition duly presented and have the Commissioners any authority to inquire into the point after the petition has been accepted by the Governor ?

The second issue relates to the due presentation of the election petition and may conveniently be dealt with first. We are of opinion that we are not competent to go behind our appointment as Commissioners for the trial of this petition and are debarred from inquiring into the question of the proper presentation of the election petition subsequent to its admission by the Governor. We must presume that prior requisites have been complied with otherwise the petition would have been dismissed by the Governor under rule 36(1). We agree with the views

expressed by the Commissioners in the *Salem and Coimbatore-cum-North Arcot* case, 1921 (see page 629). The same question has been similarly decided in the report of the election case no. 3 of 1924, Bengal (*Dinajpur Muhammadan constituency*, see page 341). Issue 2 is therefore decided against the respondent.

This brings us to the first and main issue, viz. whether the rules require that the declaration by a candidate on the nomination paper shall be dated by the candidate himself.

Rule 11, sub-rule 3 of the United Provinces electoral rules requires each candidate, either in person or by his proposer and seconder together, to deliver to the returning officer or other authorized person "a nomination paper completed in the form prescribed in schedule 3 and subscribed by the candidate himself as assenting to his nomination and by two persons as proposer and seconder".

It is to be noted that the word "subscribed" applies as much to the proposer and seconder as to the candidate. Yet the form in schedule 3 provides no space for any date under the signature of the proposer and seconder. "Subscribe" means to write under some thing, to give consent to something written by signing one's name underneath (*Attorney General vs. Bradlaugh* 54, L.J. Q.B., 213). We can discover no authority in support of the returning officer's view that the date of declaration of the candidate assenting to his nomination must be in his own handwriting. We think that if the legislature had intended that the space provided for the date of the declaration must be filled in by the candidate himself and by no other person, it would have expressly said so, as it has done in the case of the returning officer, who is required in his certificate on the said form in schedule III to state the date and hour of the delivery of the nomination paper to him. We observe that the nomination paper form prescribed in schedule II of the Ballot Act in England altogether omits the date of the candidate's declaration, showing that it is not essential.

In the *Calcutta South* (N.-M.U.) in which the candidate had omitted to fill in the date of his declaration the Commissioners held that the omission of the date was a technical irregularity and no more than an unsubstantial departure from the law. We agree with this view, and hold that "subscribed" in rule 11(3) of the electoral rules means signed and does not include dating. We find that the nomination paper of the petitioner was delivered duly completed and subscribed in conformity with the provisions of rule 11(3) of the electoral rules. The invalidation of that nomination paper by the returning officer was, therefore, improper.

We would, therefore, recommend to His Excellency the Governor that the election of the respondent Obedur Rahman Khan should be held void.

CASE No. XI
Almora (N.-M.R.) 1926

PANDIT GANGA DATT PANDE *Petitioner,*
versus
PANDIT BADRI DATT PANDE *Respondent.*

Under Indian electoral law there is no prohibition against processions or banners as in the Corrupt Practices Act (1883) of England.

. The corrupt practice defined in section 2 (a) (ii) of the first schedule of the Corrupt Practices Order, 1936 is not committed unless there is a threat of spiritual censure or divine displeasure.

A chairman and a secretary of a district board are not precluded from taking an active part in a council election, and acting as polling agents for a candidate. There will always be the question of fact whether the chairman acted in such a way that some voter ceased to be a free agent in giving his vote.

THIS election took place on November 26, 1926. The respondent, Pandit Badri Datt Pande, was returned by a large majority, polling 10,583 votes against 3,803 cast for his opponent, Rai Bahadur Pandit Lakshmi Datt Pande. The petition was not presented by the unsuccessful candidate, but by his brother, Pandit Ganga Datt Pande, who was an elector in the constituency.

The first charge was that the respondent arranged processions, and that they actually took place, the object being to "waylay and engulf the voters while going to the polling stations. It is admitted by the respondent that processions took place, though he disclaims having organized any. We are prepared to find on the evidence that they did take place and that the respondent or his agents took part in them. But there is no evidence that any voter was 'waylaid or engulfed', and processions or banners in themselves are not illegal. There is no provision in the Indian electoral law corresponding with section 16 of the Corrupt Practices Act of 1883 of England".

The second charge was that the respondent was represented as "Sakshat Badri Bishal" (Badri Bishal incarnate)—a term commonly applied to the god installed in the temple of Badri Nathji in the Tehri State. "But from this it cannot be argued that thereby the writer intended to induce a candidate or voter to believe that he will become or will be rendered an object of divine displeasure or spiritual censure as required by sub-clause (b) of clause 2 of part I, schedule V.¹ The argument that the respondent was being deified in order to create an impression that in case the voters went against him they would incur his displeasure also does not appear to be correct, as in order to influence a person by a religious threat it is necessary to invoke some destructive deity, which the god installed in the temple of Badri Nath is not.

"The verses published in the 'Shakti', dated November 9, 1926, that 'those who through greed or compulsion will elect a slave *ji huzur* as their member will be drowned in the ocean of misfortune' mean no more than that innumerable misfortunes will befall those who would elect such a person as their member, and there is no threat of spiritual censure or divine displeasure therein.

"The verses published in the issue of November 16, 1926 are more political than religious, and there is no such threat in them as is contemplated by the sub-clause referred to. The practice of representing the public (*janta*) as a goddess is not uncommon, and it cannot be argued that by reading the verses in question any literate person could be made to believe that any deity was in fact thereby intended. On behalf of the

petitioner it has also not been argued, much less proved, that any of the readers of the verses in question were misled by them."

The next charge was that Pandit Har Gobind Pant, the chairman, and Mr. Victor Mohan Joshi, who had been secretary to the district board of Almora, which district board controls labour and employs a large staff, issued leaflets and posters, and that they and some of their subordinates canvassed for votes for the returned candidate, with the knowledge or connivance of respondent or his election agent, and that this affected the election of Rai Bahadur Pandit Lakshmi Datt Pande. The Commissioners in this say :—

"It is to be noted that there is no actual allegation that either the chairman or the secretary put pressure on the employees of the district board, or took any action which would have been objectionable in a private person. The contention is that it is not right for the chairman or for the secretary of a district board to take an active part in a Council election at all. This contention finds support in some remarks contained in the report of the *Bareilly City* petition (see page 132). The facts found in that case were :—

'Babu Jia Ram, the chairman of the municipal board, was an enthusiastic supporter of the respondent. He canvassed for him, spoke at election meetings for him, and on the election day was present at the Town Hall polling station more or less continuously from 10 o'clock till 4 o'clock taking an active interest in the voting and sending messengers to fetch voters.'

"It was held that this conduct constituted an abuse of influence, and was open to criticism as interfering indirectly with the free exercise of electoral rights. In the case before us it is admitted that Pandit Har Gobind Pant, the chairman of the district board, was an enthusiastic supporter of the respondent's candidature, and that he delivered speeches, issued leaflets and acted as a polling agent at one of the polling stations. So far the two cases might appear to be on all fours, but in reality the facts of the Bareilly election were widely different from the case now before us. No evidence has been offered that either the chairman or the secretary used his official position to bring any pressure upon the employees of the district board. On the contrary, the chairman issued a strict order forbidding the employees of the board to take any part in the election. This order is dated November 1, and it was a spontaneous act on the part of the chairman, for the Government circular on the subject did not reach him until later. It was not only communicated to the staff in the ordinary way, but was also published in a newspaper. There is the evidence of Lala Moti Ram Sah, who was at that time sub-deputy inspector of schools in Almora, but who is no longer under the

control of the Almora district board, because he is deputy inspector of schools of Naini Tal. He proves that the instructions were actually communicated to the employees of the board. He identifies the signatures of the clerks of the district board office on the circular. In the month of November, when the election took place, the witness inspected 24 schools, and in all he found that the instructions had been received. Moreover, if the chairman had wished to bring pressure upon his subordinates, he was hardly in a position to do so. In Bareilly city the chairman was supported by a majority of the members belonging to his own political party, and the whole force of the municipal board organization was directed to supporting the Swarajist candidate. But in the Almora district board it is in evidence that, out of 24 members, ten were supporters of the unsuccessful candidate, and only eleven were in favour of the respondent. Out of the ten, one was the chairman of the education committee, and another was the chairman of the public works committee. Both of these acted as polling agents on behalf of the unsuccessful candidate. No doubt the chairman has certain powers which he can exert without the consent of the board, but the chairman has gone into the witness-box, and has told us that he refrained from using these powers. His method was to lay all matters before the sub-committees concerned and then before the full board.

"The facts, therefore, are quite clear. The allegations in the petition are admitted by the respondent, and the proof offered does not carry us beyond what had been admitted. The question, therefore, is whether a chairman and a secretary of a district board are precluded from taking an active part in a council election and acting as polling agents for a candidate.

"When the question is put in this form, there is little difficulty in answering it. The chairman of a district board is a citizen, and every citizen is entitled to take part in an election, unless there is some law which prohibits him from doing so. The chairman or the secretary of a district board can be elected as a member of the Council. In the late election no less than twelve chairmen of district boards stood for election. If he is himself a candidate, he can canvass freely on his own behalf. The Bareilly report to which we have referred is dated June 30, 1924. The same Commissioners, on the same day, made a report on the *Muttra* petition. In *Muttra*¹ the respondent, who had been elected, was himself chairman of the Muttra district board. Yet the Commissioners reported in favour of his election. In that case, moreover, the secretary of the district board had written articles in a newspaper in favour of the candidate returned. This conduct was considered to be proper. Mere participation in the election cannot amount to undue influence, for, according

¹ I.E.P. II. 194.

to the definition in the schedule, there must be 'interference or attempt to interfere with the free exercise of any electoral right' (schedule V, part I, rule 2). Electoral rights are possessed only by candidates and by voters (rule 30 C). It is necessary, therefore, that the freedom of a voter should be interfered with. The question will always be one of fact, whether the chairman acted in such a way that some voter ceased to be a free agent in giving his vote. If the *Bareilly* report lays down that active participation in a Council election by a chairman is in itself undue influence, then that is a proposition of law which we cannot accept. There must be particulars, or at least evidence, proving that he interfered with the freedom of voters. But, as we have said, the facts in the *Bareilly* case are widely different from the facts of the case now before us.

The result is that we find that the election is not liable to be declared void, and that the respondent was duly elected. We recommend that the petition of Pandit Ganga Datt Pande be dismissed, and that he be directed to pay the costs of the respondent which we assess at Rs. 1,053-12-6."

CASE No. XII

Ambala Division (N.-M.) 1930

(INDIAN LEGISLATIVE ASSEMBLY.)

RAI BAHADUR PANNA LAL *Petitioner,*

versus

RAI SAHIB PANDIT HARI DAS *Respondent.*

Though meticulous accuracy need not be insisted upon, it is necessary, in filling up a nomination paper, to comply substantially with the provisions of the footnote in the form, in describing the constituency.

The addition of the word "Urban", though redundant, could not mislead anyone and may therefore be ignored as the variation is trivial and immaterial.

Seemle—where several nomination papers were submitted by the same candidate for scrutiny and one was held to be correct there is no need to discuss other possibly faulty nominations.

On the 11th of August, 1930, the nomination papers of the candidates for the Ambala Division non-Muhammadian constituency for the Legislative Assembly were scrutinized by the returning officer. The nomination papers presented on behalf of two candidates Rai Bahadur Panna Lal, the present petitioner, and L. Anant Ram, were rejected by the returning officer. A third candidate L. Jai Dev withdrew. Accordingly the respondent R.S. Hari Das being the only validly nominated candidate was declared to be duly elected.

An election petition has been presented by Rai Bahadur Panna Lal and we have been appointed by the Governor-General as Commissioners to enquire into the petition and report.

In his petition Rai Bahadur Panna Lal urged that the ten nomination papers filed by him had been wrongly held to be invalid by the returning officer. Certain charges were also made in a note appended to the petition regarding the conduct of the returning officer. As the returning officer cannot be made a party to these proceedings and the charges were in our opinion irrelevant to the enquiry before us, we have not dealt with them and refused to allow any evidence to be produced on this point.

The only issue for discussion, therefore, is "whether the election of the respondent is void owing to the improper refusal of all or any of the nomination papers?"

The petitioner presented no less than ten nomination papers.

In the objections filed by Mr. Nanak Chand it was expressly stated that no question of the identity of the candidate R.B. Panna Lal arose. The identity of the various proposers or seconders does not appear to have been called in question. It appears that the returning officer rejected the petitioner's nomination papers on the ground of failure to comply with the provisions of rule 11(3).

One objection common to all was taken before the returning officer and was accepted by him, though apparently he did not attach any weight to it. The objection was that the signature of the candidate Panna Lal, R.B. was not in correct form. Before us this contention was not pressed and obviously has no force, the abbreviation R.B. for Rai Bahadur being perfectly intelligible.

The remaining objections vary as the various nomination papers vary in the manner in which they were filled up. The principal allegations are that the nominations were invalid as the constituency was wrongly described and the description of the proposer and seconder was incomplete. The name of the constituency as given in schedule (1) at page 29 of the Legislative Assembly rules is Ambala Division (non-Muhammadian). It is correctly given in the first line of all the nomination papers but in the 7th line, viz. "Constituency on the electoral roll

of which the candidate is registered as an elector " various entries occur, viz. :—

Ambala city non-Muhammadan in numbers (a), (b), (g) and (h).

Non-Muhammadan Ambala city urban (c) and (d).

Ambala Division non-Muhammadan urban (e).

Ambala Division non-Muhammadan constituency (i).

It will be convenient to consider first the two papers 2/e and 2/i.

As regards 2/i the constituency is rightly described therein and the sole question is whether this nomination paper has been rightly rejected on other grounds. The returning officer held that " Even nomination paper marked 2/i in which description of the seconder is not complete and in which the signature of the proposer also is not identical with his name shown in the electoral roll is also invalid ". The proposer's name is given as Ganga Ram Rai Sahib and his signature appears as Ganga Ram. We are not prepared to hold that the mere omission of the words " Rai Sahib " after his signature renders it invalid. It is not obligatory that the signature should be in exactly the same form as the entry in the electoral roll as long as the identity of the signatory is clear (*Cf.*, *Midnapore South* (N.-M.R.)). A more serious objection, however, is to be found in the fact that the number of both the proposer and seconder in the electoral roll of the constituency is not fully given. The only entry as regards the proposer is " no. 145, ward 3 " and as regards the seconder " no. 127, ward 3 ". Now the footnote to nomination papers directs that " where the electoral roll is subdivided and separate serial numbers are assigned to the electors entered in each subdivision a description of the subdivision in which the name of the person concerned is entered must also be given here ".

The Ambala Division non-Muhammadan constituency covers the whole of the Ambala division. The electoral roll, therefore, is subdivided into a number of parts some of which have been produced before us. It is clear, therefore, that to comply substantially with the provisions of the footnote it would be necessary to specify the portion of the electoral roll in which these numbers occur. Mr. Barkat Ali has argued that as long as there is no doubt of the identity of the proposer and seconder, which he urges could easily be ascertained by the returning officer making a summary enquiry, there is no need to insist on meticulous accuracy. He cites in this connection (*Palamau* N.-M.R.) in which apparently the Commissioners considered that as full details of the petitioner-candidate were given in the nomination form he could easily be identified therefrom and it was unnecessary to insist on the electoral roll subdivision being given in addition to the number. The present case, however, can be distinguished as the objection is with regard to the proposer and seconder as to whom full details do not appear in the nomination form. The object of the proviso is clearly to enable the

returning officer and any other persons either candidates or electors who happen to be interested to identify readily the proposer and seconder. We are of opinion that although meticulous accuracy need not be insisted upon, it is necessary in such circumstances to comply substantially with the provisions of the footnote and we agree with the view of the Commissioners expressed in *Punjab North-East Towns* (non-Muhammadan) in which it was held that a mere entry "no. 549, ward no. 5" was not a sufficient compliance to validate the entry. It is interesting to note that the petitioner in that case was the present petitioner. In our opinion, therefore, nomination paper 2/i was rightly rejected.

With regard to nomination paper no. 2/c this has not been considered separately by the returning officer in his somewhat summary order. In fact every one at the time of scrutiny appears to have overlooked the fact that in this nomination form the description of the constituency in line seven differs from the description in the remaining eight forms.

A very feeble attempt was made to argue that as the returning officer has not referred to this nomination paper 2/e specifically it could not have been in its present form when before him. The entry, however, in line seven of Ambala Division non-Muhammadan urban shows no signs whatever of either addition or alteration and the nomination paper bears an order of rejection signed by the returning officer. There is not the least doubt in our opinion that the nomination paper exhibit 2/e is the original and genuine nomination paper that was filed before the returning officer.

The description here given is "Ambala Division non-Muhammadan urban". This is in our opinion a perfectly satisfactory description of the constituency. It is argued that as under rule 6 of the Legislative Assembly electoral rules the candidate may be entered in some electoral roll other than that of the constituency for which he is standing, it is necessary that the words "Legislative Assembly" should appear. We consider it unnecessary that the words "Legislative Assembly" should be added as it is clear from the nomination paper as a whole that the candidate is standing for the Legislative Assembly and there is no other constituency except that for the Legislative Assembly which bears the name of Ambala Division non-Muhammadan.

The word "Urban" is merely redundant. It is argued that for the Legislative Assembly there is no distinction between urban and rural constituencies, whereas for the Punjab Legislative Council there are such different constituencies and therefore confusion might arise. The constituency of the Punjab Legislative Council, however, in which Ambala city falls is known as North-East Towns non-Muhammadan and this could not possibly be confused with Ambala Division non-Muhammadan urban. Such a defect could not mislead anyone

Similar defects were ignored in *Midnapore South N.-M.R.* In our opinion the word "urban" is redundant and may be ignored as the variation is trivial and immaterial (*Cf., Bengal East*). We are, therefore, of opinion that this nomination paper is in order as regards the description in line seven.

In this paper in the case of the proposer and seconder in addition to the serial number and the number of the ward the electoral roll is given as Ambala city non-Muhammadan. It is contended that this is an insufficient description. Mr. Nanak Chand has argued that it should be specified in addition that the electoral roll is that for the Legislative Assembly and forms part of the electoral roll of the Ambala tahsil and the Ambala district. This we consider is going too far. The note to the nomination form merely provides that the subdivision of the electoral roll has to be given. In the present case there is a joint roll for both the Legislative Assembly and the Punjab Legislative Council. Voters who are entitled to vote in both constituencies have separate serial numbers in each constituency as given in columns 2 and 3 of the electoral roll. The electoral roll itself is headed: Community (kaum) non-Muhammadan, District Ambala, Tahsil Ambala, Town Ambala city. In our opinion the words "Ambala city non-Muhammadan" are a sufficiently full description of the subdivision of the electoral roll.

We are, therefore, of opinion that this nomination paper was in order and was wrongly rejected by the returning officer.

As regards the remaining eight nomination papers, the question of whether there has been sufficient compliance with the rules and regulations for filling them up is not free from difficulty. We will not, however, discuss this in view of the finding we have reached regarding the nomination paper exhibit 2/e.

We, therefore, report that in our opinion the nomination paper for the petitioner Rai Bahadur Panna Lal marked exhibit 2/e was wrongly refused and that, therefore, the election of the respondent should be declared void.

As regards the question of costs, we recommend that in view of the carelessness with which the nomination papers of the petitioner were filled in he be left to bear his own costs with the exception of such costs as were incurred by him in summoning witnesses in consequence of the objection raised and subsequently dropped by the respondent. These costs amount to Rs. 115.

CASE No. XIII
Amritsar City (M.) 1924
(PUNJAB LEGISLATIVE COUNCIL.)

SHEIKH MUHAMMAD SADIQ *Petitioner,*

versus

MIAN MUHAMMAD SHARIF *Respondent.*

It is not necessary for a polling agent to be given a written authority. It is sufficient to establish *de facto* agency if the evidence proves that a person acted on behalf of a candidate at the polling booth "with his knowledge and consent". Agency has to be inferred from the circumstances and the conduct of the parties.

One case of personation procured by an agent is sufficient to avoid the election.

The wages of persons in the service of a candidate who are put on election work should be shown in the return of election expenses.

It is not allowable to amend the list of particulars by including fresh instances of a similar kind. Further details may be given with regard to the instance referred to in the original list.

THE petitioner seeks to avoid the election on the grounds set forth in detail in his petition, which was published in the *Punjab Gazette*, dated 22nd February, 1924. The petitioner's main allegations are that the nomination paper of respondent no. 1 was invalid on account of certain irregularities and omissions, and that respondent no. 1 and his agents have been guilty of the corrupt practice of procuring "personation" under part I of schedule V of the electoral rules. The petitioner also challenges the correctness of the return of expenses filed by respondent no. 1, and claims the seat for himself on the ground that he secured the highest number of votes next to him.

Khawaja Ghulam Yaseen, who was made a *pro forma* respondent, did not put in appearance. Respondent no. 1 (hereafter referred to as respondent) denied the petitioner's allegations, and filed a recriminatory petition containing counter-charges against the petitioner. The latter was, however, withdrawn at a subsequent stage.

Several of the charges in the original petition had to be struck off for want of adequate particulars, while others were abandoned at the time of arguments after a half-hearted and infructuous attempt to substantiate them. The petitioner applied for permission to amend his petition by introducing certain fresh charges of personation, but the application was disallowed for reasons given in our order, dated 12th April, 1924, a copy of which forms an annexure to this report. The only pleas or charges that were put in issue and eventually pressed before us were those given below, and it will be sufficient for the purpose of this report to confine ourselves to the same :—

- (a) That the nomination paper of the respondent was invalid,
 - and its improper acceptance by the returning officer renders the election void ;
- (b) That Fazal Hussain, the polling agent,—(or, at any rate, an agent)—of the respondent procured the "personation" of a voter named Muhammad Ibrahim in ward no. 12, and this was done with the knowledge and connivance of the respondent ; and
- (c) The return of expenses filed by the respondent was false in material particulars.

As regards (a), there is no doubt that there are several omissions and irregularities in the nomination paper, some of which, at any rate, cannot be considered to be altogether immaterial. But objections were raised before the returning officer, and the nomination paper was accepted by him after satisfying himself as regards the same. Under the circumstances, we consider it preferable not to dispose of this petition on the technical objections relating to the nomination paper, especially as we

are clearly of opinion, that the petitioner must succeed on merits on the other two charges specified above. We, accordingly, proceed to discuss the latter charges.

The factum of "personation" in the case of a voter named Muhammad Ibrahim in ward no. 12 has been proved beyond any doubt, and was rightly not disputed by the learned counsel for the respondent at the time of the arguments. There is ample evidence on the record to show that the name of Muhammad Ibrahim (P.W. 10) was wrongly entered twice in the electoral roll, viz. in ward no. 4 and ward no. 12; that Muhammad Ibrahim voted in ward no. 4 and not in ward no. 12, and that some other persons voted for him in the latter ward. The petitioner believed that one Barkat Ali of Gujranwala (P.W. 39) had personated Muhammad Ibrahim. Barkat Ali denied having done so, but the petitioner's allegation has been proved to be correct by the testimony of the Finger-Print Expert. At the time Barkat Ali personated Muhammad Ibrahim, the vote was challenged by an agent of the petitioner. Barkat Ali was, however, identified by one Fazal Hussain on behalf of the respondent as the right voter and then the vote was allowed to be recorded. Barkat Ali's thumb-impression was taken at the time on the list of challenged votes, and the Finger-Print Expert has found this impression to correspond with his thumb-impression taken before us. The thumb-impression on the counterfoil of the corresponding ballot-paper was unfortunately not clear enough for comparison, but, so far as comparison, was possible, it appeared to correspond with that of Barkat Ali.

The petitioner's allegation is that Fazal Hussain, who identified Barkat Ali as the right voter, was a partner of the respondent and was acting as his polling agent on the polling day. This allegation is denied by the respondent. According to the respondent, Fazal Hussain, had gone to Calcutta on business for a couple of months and returned to Amritsar only two days before the polling. He never worked as an agent of respondent and was not authorized to act as polling agent. The respondent professes to be ignorant as to who identified Barkat Ali as the real voter, when he was personating Muhammad Ibrahim, and claims immunity from the consequences of the "personation", on the ground that neither he nor any of his agents was, in any way, responsible for it. Fazal Hussain (P.W. 14), who was examined as a witness, supports the above allegations of the respondent. He admits that he went to the polling station and voted for respondent, but denies having worked for him as an agent either before or on the polling day.

The list of challenged votes (exhibit P-14-A) shows clearly that one Fazal Hussain, son of Maula Bux, of Katra Farid Chauk, identified the person, who voted as Ibrahim (*alias* Muhammad Ibrahim) in ward no. 12. The presiding officer, Kartar Singh (P.W. 8), was unable to identify Fazal Hussain, owing to lapse of time, as he was not personally

acquainted with him. But Maqbul Ahmad, Assistant District Inspector of Schools (P.W. 7), who was working as a polling officer at the same polling station and who also saw Fazal Hussain identifying some challenged voters, was acquainted with him and has described him as a skin-merchant of Amritsar city. Unfortunately, Fazal Hussain was not present at the time when this witness was examined, but there is no suggestion in his cross-examination that the person named by him might be other than Fazal Hussain, the partner of respondent (P.W. 14). Fazal Hussain was, however, present in court when Manohar Lal (P.W. 19), Excise Sub-Inspector—another polling officer—was examined, and he identified Fazal Hussain and deposed that Fazal Hussain was working for one of the candidates. Diwan Ali, Patwari (P.W. 22), who was giving “parchis” to the voters at the same polling station, also identified Fazal Hussain and stated that he was bringing voters to the polling booth and was present throughout the day.

The disinterested testimony of the above officials at the polling station is further supported by the evidence of respectable witnesses like Sheikh Ali Bux, Honorary Magistrate (P.W. 4), Abdul Majid, vakil (P.W. 5), Mirza Qamar Beg (P.W. 17), record-keeper in the office of the District Judge, Amritsar, and Gopal Das, import merchant (P.W. 20). Sheikh Ali Bux (P.W. 4) clearly deposes that Fazal Hussain (whom he identified in court) was at the polling station and was helping the respondent. This witness voted for the respondent and cannot be suspected of any partiality to the petitioner. M. Abdul Majid, vakil, saw Fazal Hussain taking voters to the polling booth and asking people to vote for the respondent. Mirza Qamar Beg, who voted for the third candidate, Khawaja Ghulam Yaseen, and seems to be a disinterested witness, deposes that he saw Fazal Hussain identifying certain challenged voters. This witness knew Fazal Hussain, and identified him in court also. Gopal Das (P.W. 20) was present at the polling station merely to watch, as he was going to act as an election agent for a candidate for the Legislative Assembly. He also saw Fazal Hussain identifying certain voters, who were challenged by an agent of the petitioner.

In reply to the overwhelming evidence produced by the petitioner, the respondent has produced only two witnesses in defence, both of whom are his agents and partisans. These witnesses depose that they were asked by the respondent to go to the polling stations on his behalf, and that Fazal Hussain did not work for respondent either on the polling day or before. These witnesses, however, knew nothing about the challenged votes. They have deposed that they did not remain continuously at any particular polling station—a conveniently evasive statement, obviously intended to enable the witnesses to escape from possible consequences of any corrupt practices, that might be held to be proved. If these persons were really working for the respondent, it is

difficult to believe that they would have remained ignorant of the challenged voters or that they would have allowed any unauthorized person to identify such voters. It must be remembered that four different voters were challenged on the polling day. On each occasion the challenge must naturally have led to an inquiry, and the fact could not be expected to remain unknown to persons interested in or working on behalf of the respondent.

The allegation that Fazal Hussain had gone on business to Calcutta and had returned only a couple of days before the polling day cannot also be believed. Had there been any truth in this allegation, the respondent could easily have produced documentary proof, e.g. in the shape of letters written by or to Fazal Hussain, or accounts of expenses in connection with his journey to Calcutta and his stay there. But no attempt has been made to produce any such proof. Fazal Hussain was admittedly a partner of the respondent for some seven years. He is evidently a man of some influence, as his firm pays income-tax to the extent of about Rs. 8,500. It was, therefore, only natural that he should have helped the respondent in his election campaign. Fazal Hussain is a resident of ward no. 12 and was very probably well-acquainted with the voters of that ward. It appears that he noticed that the name of Muhammad Ibrahim was entered as a voter in his ward by mistake and arranged to get Barkat Ali to personate him. Fazal Hussain originally came from Gujranwala, and it is significant that Barkat Ali, the personator, belongs to the same place. Fazal Hussain deposes that he went to Gujranwala for a few days just before the polling. It seems very likely that he went there to procure personators.

In view of the evidence discussed above, we feel no hesitation in holding that Fazal Hussain helped the respondent by canvassing before the polling day and by taking voters to the polling booth and identifying them on the polling day. The question whether he was given a written authority as a polling agent or not is not material. Kartar Singh, the presiding officer (P.W. 8) has deposed that he was shown a written authority by Fazal Hussain, and there is no reason whatever to disbelieve his statement. But apart from the written authority, there is no room for doubt that he was acting as a *de facto* polling agent, and in view of his close connection with the respondent and our finding that he was also canvassing for him we feel no doubt that he must have acted on behalf of the respondent at the polling booth, "with his knowledge and consent".

The facts proved above are sufficient to constitute "agency". The term "agent" has a wide significance in election law, and it has been defined to include "any person who is held by the Commissioners to have acted as an agent with the knowledge or consent of the candidate" (*vide* rule 30, Punjab electoral rules). No authorization or declaration,

in writing is necessary, and "agency" has to be inferred from the circumstances and the conduct of the parties. (See *Wigan* case 4 O'M. & H., 10.) We have found that Fazal Hussain did canvassing for the respondent and led and identified voters at the polling booth. These facts have been held to be sufficient to establish agency (*Cf.* Rogers' *On Elections*, 19th edition, volume II, pages 601 and 605).

We accordingly find that Fazal Hussain was an agent of the respondent, and was guilty of the corrupt practice of procuring personation.

There is no evidence on the record to prove that the respondent had any knowledge of the corrupt practice, but the procuring of personation, even by an agent, falls under part I of schedule V of the Punjab electoral rules and is sufficient to render the election of the returned candidate void, see rule 44(b).¹

Although only one instance of personation has been established, we are unable to take the case under rule 44, clause (2), as the respondent has made no effort whatever to show that the conditions of that clause were fulfilled. He has produced no evidence that he had taken any precautions or issued any instructions to his agents with a view to prevent commission of corrupt practices. The evidence of one of his agents (Ghulam Hussain, R.-W. 2), on the other hand, gives the impression that respondent was rather negligent in the matter. According to this witness, the respondent took no steps to appoint his representatives to attend at the polling stations till the evening before the polling day, and even then gave them no instructions as regards their duties. If the respondent was content to leave his agents to conduct themselves in such manner as they chose he cannot escape the consequences of their doings.

We have next to deal with the return of expenses filed by the respondent. The petitioner's main contention in respect of the return is that it does not include various items of expenditure incurred by the respondent in connection with his election, viz. :—

- (1) Cost of certain posters issued in favour of the respondent ;
- (2) Cost of petrol ;
- (3) Cost of stationery ;
- (4) Rent, wages, etc. in connection with the tents, etc. pitched for voters near the polling booth ; and
- (5) Pay of the election agents.

The return shows no expenditure whatever under (2), (3), (4) and (5). The explanation offered is that very little stationery was used, and that it was taken from the respondent's shop. The respondent states that he did not, as a rule, go in his motor for canvassing purposes,—

¹ Section 3 of first schedule of Corrupt Practices Order, 1936, read with paragraph 7 (1) (b) of part III of the same.

though he may have at times done some canvassing, when he went out in his car on other business. The tents pitched near the polling booth are said to be the property of the respondent, and it is stated that the men from his factory did the work of pitching the tents without any extra wages. Abdul Rahman Butt, the election agent of the respondent, is an employee of the respondent, and is said to have worked as an election agent without any extra remuneration.

The above explanation is by no means convincing. It is difficult to believe that Abdul Rahman Butt, and all other employees of the respondent worked for him in the election without extra remuneration in some form or other. It is also unlikely that a man in respondent's position and possessing a car should not have used his car for canvassing purposes. The petitioner has produced some witnesses who depose that the respondent did go about in his car for canvassing and the respondent has merely tried to get out of the difficulty by stating that he did canvassing occasionally when he went out for other business. As regards stationery, too, a fair amount must have been required. We think the respondent ought to have shown in his return all expenses in connection with his election, big or small, and the explanation that certain articles were taken from respondent's shop or house cannot be considered satisfactory. We also consider that if any men in the service of the respondent were put on election work, their wages for the period should have been shown in the return. (See *Hartlepool* case 6 O.M. & H., 5.)

The explanation offered with respect to item (1) above is still more unsatisfactory. The respondent admittedly issued some posters from time to time during the course of his election campaign. A voucher for Rs. 117 paid to the *Vakil* Press in connection with the printing has been attached to the return of expenses; but the voucher does not include some of the posters issued in respondent's favour. Respondent's explanation is that these posters were issued by other persons without his knowledge; but this explanation does not seem reliable. For the manager of the *Vakil* Press, who was examined as a witness by the petitioner and was called upon to produce his accounts, has deposed that the respondent paid Rs. 60 and Rs. 81-4-0 on 29th November and 13th December, 1923, in connection with printing work, i.e. Rs. 141-4-0 in all. It was suggested that some of this work may have been in connection with the private business of the respondent. The respondent was, however, examined on the point and was unable to show from his account-books that any printing charges were paid in connection with his business on the above dates. The sum of Rs. 141-4-0, referred to above, was paid during the election days. It is, therefore, only reasonable to conclude that the voucher for Rs. 117 does not include all the charges of printing work done in connection with the election. The mere fact that the posters were issued over the signatures of other persons cannot be

accepted as proof of the printing charges having been paid by those persons. One Fazal Hussain (P.W. 49) has deposed that he got a circular printed in favour of the respondent at his own expense, but we do not consider his evidence reliable. The evidence of Abdul Rahman Butt, the election agent, shows that the poster (exhibit P. 30) is included in the voucher for Rs. 117, though this poster purports to have been issued by one Abdul Aziz of Katra Bagh Singh. Abdul Rahman further deposes that exhibit P. 29 was printed by him and this poster also was issued in the name of a third person, viz. M. Abdul Qadir. Qazi Abdul Hamid, a signatory of another poster (P.W. 47) deposes that he signed the poster merely because some one brought it to him on behalf of the respondent and that he did not pay for the printing. In view of all these facts, we hold that the item of Rs. 117 in the return does not represent the real expenditure incurred by the respondent in connection with printing.

There are other facts in evidence which show that the respondent and his election agent did not keep proper accounts, and that the return of expenses cannot be looked upon as reliable. Abdul Rahman, respondent's election agent, has produced an account-book (exhibit P.W. 38-A.) which could not in any sense, be considered regular or to fulfil the requirements of electoral rule 21. According to this rule, the election agent has to keep separate and regular books of account and enter therein all the particulars of expenditure, which are eventually to be shown in the return of expenses. Abdul Rahman does not appear to have kept any daily account. The account produced consists of entries on four pages, and from their appearance these entries seem to have been made at one and the same time subsequently. The account-book shows that Rs. 500 were taken by Abdul Rahman from the respondent for election expenses on 10th October, 1923, while the return of expenses shows that only Rs. 377-15-6 were taken in smaller sums on different dates, viz. Rs. 105 on 21st October, 1923, Rs. 19 on 25th November, 1923, Rs. 252 on 27th November, 1923, and Rs. 1-15-6 on some other date, which has not been specified. On another page the payments made for copies of electoral rolls are shown. No dates are given except in one instance, and that date (11th October, 1923) does not agree with any of the dates given in the voucher. The total expenditure in the account-book is given as Rs. 477-15-6, while in the return it is shown as Rs. 377-15-6. This cannot be treated merely as a mistake in totalling, for the election agent is careful enough to note in the account-book at the end that a sum of Rs. 22-0-6 ($\text{Rs. } 500 - \text{Rs. } 477-15-6 = \text{Rs. } 22-0-6$) was returned to the respondent. The respondent, on the other hand, deposed that out of the sum of Rs. 500 given by him to the election agent a sum of Rs. 200 was returned to him. It is also curious that neither the sum of Rs. 500 nor the sum of Rs. 200 (or Rs. 22-0-6) said to have been returned to the

respondent appears anywhere in his own account-books. The account-books show that 3 or 4 clerks were employed on election work at Rs. 35 per mensem. The employment of these clerks suggests that there must have been a good deal of clerical work, and it is surprising that no expenditure for stationery is shown in the return. The respondent has explained that the clerks merely went round from time to time to remind voters about voting for him, but the explanation seems absurd and unreliable.

The above facts do not require any comment. They show beyond any doubt that the rule requiring regular accounts of election expenditure has been flagrantly disregarded by the respondent and his election agent, though they carry on extensive business and know how to keep accounts. Consequently, the return of expenses, based upon such accounts as have been produced by the election agent in this case, cannot be accepted as reliable. In view of the evidence discussed already, we hold the return to be false in a material particular, viz. the printing charges in connection with posters, circulars, etc. issued in connection with the election.

It is true that no maximum has yet been prescribed in India for the expenses which can be incurred by a candidate. But the absence of such a maximum does not relieve a candidate from the necessity of compliance with the rule. The election expenses afford a useful check on the methods employed in the conduct and management of an election, and the matter cannot be treated lightly. It has been recently held in England that an election court might avoid an election if the return of expenses has been carelessly prepared, even if no corrupt intention is proved. (See Hammond's Indian Candidate and Returning Officer, pages 79-80.) According to the Indian rules a false return of expenses by itself is not sufficient to avoid an election. But, we have to report that the respondent as well as his election agent, Abdul Rahman, have incurred the disqualification, referred to in rule 5(4) of the Punjab electoral rules.

We have accordingly to report under rules 44 and 45 that the respondent no. 1 was not duly elected inasmuch as his agent Fazal Hussain was guilty of the corrupt practice of personation falling under part I of schedule V of the Punjab electoral rules. Fazal Hussain has incurred the disqualification referred to in rules 5 and 7 of the same rules.

We award the petitioner Rs. 750 as costs against respondent no. 1. The costs may be deducted from the security of Rs. 1,000 deposited by respondent no. 1 in connection with his recriminatory petition.

(ANNEXURE TO THE REPORT)

Order.—The petitioner in this case has applied for permission to amend the list of “corrupt practices” attached to his petition by including

therein certain other instances of alleged corrupt practices which were subsequently brought to his notice ; and which are shown in the list B, accompanying his application, dated 10th March, 1924. Instead of paragraph 1 of the original list which refers to one case of personation of a voter, the petitioner now wants to substitute paragraphs 1 to 1(F) of list B, giving several such instances. There are also certain other instances of corrupt practices of a different type included in list B, but these were given up at the time of arguments, and need not, therefore, be discussed.

On behalf of respondent no. 1, it was contended that the amendment sought is not permissible under the electoral rules. A preliminary issue was struck on this point, and arguments have been heard.

Counsel for the petitioner has tried to justify the proposed amendment on the ground that paragraph (5) of the petition clearly mentions that a very large number of persons recorded votes in favour of respondent no. 1 by falsely personating as proper voters, and that, therefore, the amendment does not introduce any new charge, but only fresh instances. He has cited certain English decisions (*vide inter alia* the decisions cited on pages 218-9 of the law of Parliamentary Elections and Elections Petitions by Fraser, 3rd edition) in support of his argument. There is no doubt that in some of the reported cases in England considerable latitude seems to have been given in the matter of amendment. But we consider it unnecessary to discuss these cases so far as the present issue is concerned, as it is not disputed before us, that the procedure in England in this respect is different and is not governed by the same rules as those which obtain in India. The present application is for amendment of the list attached to the petition, which is prescribed by rule 33 of the Punjab electoral rules (1923). According to clause (2) of this rule, the petitioner is required to give full particulars of the alleged corrupt practices in this list. Clause (3) of the rule defines the scope of the amendment of this list, which can be permitted. Clause (3) lays down that the Commissioners may allow the particulars *included in the said list* to be amended or order such further and better particulars in regard to *any matter referred to therein* to be furnished as may in their opinion be necessary for the purposes of ensuring a fair and effectual trial. Now, as already stated above, petitioner has referred to only one instance of personation in paragraph (1) of the list, and by the proposed amendment he seeks to introduce several other instances into the list. We consider that this clearly goes beyond the scope of clause (3) of rule 33. Petitioner can be allowed or required to give further details with regard to the instance referred to in the original list, but we do not think it is open to him now to introduce fresh instances. It would be, in our opinion, straining the language of the rule to hold that the word "particulars" includes fresh instances of a similar kind.

It was urged that a different view as regards the scope of amendment was taken in the *Attock* case of 1920, but the rules then in force were different. In the election rules of 1920, there were no provisions as regards the filing of a list giving particulars of the alleged corrupt practices or the amendment thereof corresponding to clauses (2) and (3) of rule 33. It seems to us that these clauses have been framed with a view to give the earliest possible notice of the charges relied upon to the respondent and to prevent his being harassed by fresh matter being introduced at later stages. Clause (3) permits amendment of list only so far as it may be necessary to give sufficient notice of the charges included in the list to the respondent.

It was finally argued that the amendment should at any rate be allowed under the general provisions of the Civil Procedure Code (*vide* order VI, rule 17). But we do not consider it open to us to fall back upon these provisions, when a specific rule has been framed on the point.

We may add in the end, that even if we had the discretion to allow the proposed amendment, we would not have allowed it in the present case, as the petitioner has shown no good reasons for not including the additional instances in the original list. His application, dated 10th March, 1924, was not even accompanied by any affidavit giving his reasons. An affidavit was presented yesterday, but even that affidavit does not show that the petitioner could not have discovered the additional instances, with due diligence and care, at the time when the original petition was filed.

We, therefore, hold that we can only allow the petitioners to give further particulars with respect to the specific instance of personation referred to in paragraph (1) of the original list.

CASE No. XIV

Azamgarh (N.-M.R.) 1931

(UNITED PROVINCES LEGISLATIVE COUNCIL.)

SHIVA SHANKER SINGH *Petitioner,*

versus

THAKUR MOTI SINGH *Respondent.*

Literal agreement of the description of candidate or proposer with the electoral roll is not necessary. It is sufficient if the nomination papers contain sufficient particulars to identify the persons concerned. An unimportant misdescription does not affect the validity of the nomination.

Though the certified copy of an entry in any electoral roll is conclusive proof of the right of the elector, other evidence is admissible.

THE petitioner Shiva Shanker Singh and the respondents were candidates for the United Provinces Legislative Council, at the last general election, from the Azamgarh District non-Muhammadan rural constituency. The petitioner is registered as an elector in the Ghazipur district. He filed a letter dated August 29, 1930, from the District Magistrate to the returning officer, Azamgarh, along with his nomination papers to establish his identity. He was nominated by means of two nomination papers. Both these nomination papers were rejected by the returning officer on the grounds that the father's name and the address of the petitioner given in the nomination papers did not correspond with those mentioned in the aforesaid letter, or, the certificate as he calls it, and that there was no constituency of the description given in the nomination papers, in the schedule appended to the regulations. The disagreement of the name of the proposer, as signed by him, with that given in the electoral roll was an additional ground for his rejecting the first nomination paper. As the nomination papers of the petitioner were rejected and the respondent no. 2 withdrew his candidature within the prescribed time, the respondent no. 1 was returned unopposed. The present petition has been filed to have the election of the respondent no. 1 declared void on the ground that the nomination papers of the petitioner were improperly rejected by the returning officer and that the rejection materially affected the result of the election.

The respondent no. 1 alone puts in appearance and opposes the petition. The pleadings of the parties have given rise to the following issues :—

1. Are the candidate Thakur Shiva Shanker Singh and his proposer not identical with the persons whose electoral numbers are given in the nomination papers as the numbers of such candidate and proposer ?
2. Is the constituency wrongly described and does that render the nomination papers invalid ?
3. In order to prove the identity was it necessary for the petitioner to produce a certified copy of any entry made in the electoral roll of the constituency, and if so, how does the non-production of a certified copy affect the validity of the nomination papers ?

Issue no. 1.—The father's name of the petitioner given in the nomination paper was "Thakur Dwarka Prasad Singh", while in the aforesaid letter it was mentioned as "Babu Dwarka Prasad Singh". The address of the petitioner as entered in the nomination paper, was "V. and P.O. Rampur, district Ghazipur", and that given in the letter was "Rampur, pargana Khanpur, district Ghazipur". The difference between the two descriptions was that the petitioner's father's name in the nomination paper was prefixed by "Th." (an abbreviation of Thakur)

instead of "B." (an abbreviation of Babu) and it contained "Pd." (a contraction of "Prasad") and in the address the pargana was not given but the letters "V. and P.O." standing for village and post office were prefixed to Rampur, the name of the village. The discrepancy in the description of the proposer was that he signed his name as "Rai Rash Behari Lal" in the nomination paper while the name appearing in the electoral roll against the electoral number given in the nomination paper was "Rai Ras Behari". In the absence of any evidence in this case to show that there were any other persons besides the petitioner and the proposer answering to the description of the petitioner as given in the said letter and that of the proposer as given in the electoral roll against the numbers given in the nomination paper, it does not seem reasonable to hold that the petitioner and the proposer were not identical with the persons referred to in the said letter and the electoral roll for the mere reason that there was no absolute literal correspondence between the descriptions as given in the nomination papers and the said letter and the electoral roll. The inaccuracies in description in this case were merely technical and of no importance. They were not of a nature which could have misled anyone.

The grounds on which a nomination paper can be refused are set out in regulation 9 of the regulation for the election of members to the Legislative Council of the United Provinces. The returning officer is, under sub-clause (1) (IV) of the regulation, the only clause applicable in this case, authorized to reject a nomination paper only in case he has doubts as to the identity of the persons concerned, and even then as provided by sub-clause (1) after such summary enquiry as the returning officer thinks necessary. There is no provision in the regulation requiring that the description of the candidate or of the proposer given in the nomination papers should literally agree with the description given in the electoral roll. The provisions of the regulation are complied with if the nomination papers contain sufficient particulars to identify the persons concerned. The discrepancy in the description in this case as stated above was not such as could have raised any doubts as to the identity of the persons concerned. We might also observe that technical and trifling mistakes of the nature similar to those in this case have been condoned both here and in England.

This issue is therefore decided against the petitioner.

Issue no. 2.—The 7th entry in the nomination paper under the heading "Constituency" on the electoral roll of which the candidate is registered as an elector is "polling station, Khanpur, district Ghazipur, non-Muhammadan rural". The correct name of this constituency was "Ghazipur District non-Muhammadan rural". The addition of the words "polling station, Khanpur" and putting the word "district" before, instead of, after the word "Ghazipur" in the name of the constituency cannot also

be said to be misleading. There could be no room for doubt as to the constituency to which the petitioner intended to refer in this case. For the reasons given above, which equally apply in this case, the misdescription was also of no importance and did not affect the validity of the nomination. We accordingly find that there was a mistake in the description of the constituency in this case but it did not render the nomination invalid.

Issue no. 3.—Regulation 9 (2) (a) provides that the production of any *certified copy of an entry made in the electoral roll of any constituency* shall be conclusive evidence of the right of any elector named in that entry to stand for election. But it does not provide that the certified copy shall be the only evidence admissible in proof of the matter. The petitioner, has in this case, instead of producing a certified copy of the electoral roll, produced a letter, dated August 29, 1930, from the District Magistrate of Ghazipur to the returning officer, Azamgarh, showing his name, parentage, address, the name of the constituency on the electoral roll of which he was registered as an elector and his electoral number. This letter thus contains all the particulars appearing in the electoral roll necessary to establish the identity of the petitioner and it was as reliable as a certified copy of the electoral roll. We decide this issue also in the petitioner's favour.

On the above findings we hold that the nomination paper of the petitioner was improperly rejected and that the improper rejection of the petitioner's nomination paper has materially affected the result of the election and are of opinion that the respondent no. 1, the only elected candidate in this case, has not been duly elected. We accordingly recommend that the election of Thakur Giri Raj Singh, the respondent no. 1, should be held to be void.

In the circumstances of this case we recommend that the parties do bear their own costs.

CASE No. XV

Balasore South (N.-M.R.) 1927

SITAKANTA MAHAPATRA *Petitioner,*

versus

HAREKRISHNA MAHATAP *Respondent.*

Any entertainment by providing food with the corrupt intention of influencing the voters is a corrupt practice falling within the definition of bribery, if arranged by a candidate or his agent or by any other person with the connivance of a candidate.

The omission of certain items of expenditure from the return of election expenses may raise the presumption that the omitted payments were corrupt. Expenses for entertainment by an agent must be included in the return as having been incurred in the conduct or management of the election.

Vouchers for payments made, e.g. for taxi hire should be obtained and filed with the statement of election expenses.

THIS was a petition to set aside the election of the respondent Babu Harekrishna Mahatap to the Bihar and Orissa Legislative Council for the South Balasore non-Muhammadan rural constituency, which was held on the 30th November, 1926.

The original petitioner Chaudhuri Bhagbat Prashad Samantarai Mahapatra was an unsuccessful candidate for election from the same constituency. A third candidate Babu Mukunda Prasad Das, son-in-law of the original petitioner withdrew his candidature before the election. In the election the respondent secured 3,007 votes as against 567 votes obtained by the original petitioner.

The petition in question was filed on the 22nd of January last. Subsequently the petitioner applied to the election Commissioners for permission to withdraw his petition on the ground of illness. Notice of this application was duly published in the *Bihar and Orissa Gazette*. After hearing the parties, the petition was allowed to be withdrawn. Subsequently an application was filed under the Bihar and Orissa electoral rule 39 (5) (c) by the present petitioner Babu Sitakanta Mahapatra, who was son of the original petitioner, for the substitution of his name as petitioner in the place of his father, on the ground that he was an elector of the South Balasore non-Muhammadan rural constituency. This application was not opposed by the respondent. Eventually after various adjournments due to causes beyond control the prayer for substitution was granted and the case proceeded.

Charges were preferred of undue influence by members of the district and local boards, of intimidation by a polling agent of the respondent, of the publication of false statements, etc. On these points the Commissioners found the evidence to be unconvincing.

The main charge against the respondent was that of treating, the petitioner's case being that voters were fed at three different centres. Regarding this the Commissioners reported as follows :—

The explanation to rule 44(2) of the Bihar and Orissa electoral rules has defined the term "treating" as meaning "the incurring in whole or in part by any person of the expense of giving or providing any food, drink, entertainment or provision to any person with the object, directly or indirectly, of inducing him to vote or refrain from voting or as a reward for having voted or refrained from voting". Under the explanation to clause 1 of schedule V,¹ which deals with corrupt practice of bribery, the term gratification is not restricted to pecuniary gratification

¹ Recent amendments introduced by the Corrupt Practices Order, 1936 allow treating if it takes the form of "customary hospitality which did not affect the result of the election".

and includes all forms of entertainment. Any entertainment by providing food with the corrupt intention of influencing the voters is a corrupt practice falling within the definition of bribery. It is a fundamental principle of law that an election should not be lightly set aside or a person held guilty of corrupt practice unless the evidence is so satisfactory as to leave no room for any reasonable doubt. Mere suspicion should not be the basis of any judgment.

Bearing these principles in mind, let us apply ourselves to the facts of the present case. The evidence as to entertainment in Jai Sahu's shop consists of the testimony of Jai Sahu himself and his brother and of two voters Markanda Sahu and Mukunda Patnaik. This evidence shows that a number of voters were fed at Jai Sahu's shop on the 30th of November by Radhashyam Naik on behalf of the respondent. Jai Sahu struck us as being an independent witness. This oral testimony is corroborated by the entries in the confectioner's account-book (exhibit 8) which purports to contain the signature and initials of one Radhashyam Naik and bears the heading 'vote expenses of Harekrishna Mahatap (respondent) under the date 30th November, 1926'.

The oral evidence shows that voters were entertained. The entry exhibit 8 shows that 145 persons were fed. According to Jai Sahu some workers for the respondent took tiffin at his shop, and he estimates that some 20 or 30 men were working for the respondent. Eliminating this number we may fairly hold that more than 100 voters were supplied with food in Jai Sahu's shop on the day of election.

This entertainment, in order to fall within clause 1 of part I of schedule V, has to be by a candidate or his agent or by any other person with the connivance of a candidate. The law of agency in election cases goes much further than the ordinary law of principal and agent (*Wigen* case, 4 O'Malley and Hardcastle at page 10). As held in the Indian case of *Kangra cum Gurdaspur*, the term agent has a wide meaning in election law and the relationship has often to be inferred from the facts and circumstances of the case. This view was also taken in the *Hissar* case. Radhashyam Naik is shown in part D of the respondent's return of election expenses as having received some amount on account of travelling expenses. He admits that he was canvasser for the respondent and also that he canvassed for him at the Bhadrak polling station on the polling day. His house is in the jurisdiction of Basudebpur polling station. He came to Bhadrak on the 28th November as the respondent sent for him. He arranged for the refreshment of the voters at a confectioner's shop which, according to respondent's witness no. 2, adjoins the polling station. The respondent admittedly was present at the polling booth at Bhadrak that day. He must have noticed the part played by Radhashyam in providing the refreshment. Radhashyam had an appointment as a spinning teacher under the district board on a small

salary of Rs. 20 per month, and could not have himself paid for the sweets. Taking all the facts and circumstances we cannot but come to the conclusion that Radhashyam acted as an agent of the respondent in the matter.

The next question for consideration is the intention with which this entertainment was provided. It appears that some 100 voters were given entertainment on the polling day close to the polling booth. Applying the maxim that a person must be considered to intend the natural and obvious consequences of his acts, the conclusion is irresistible that all this was done for the purpose of influencing votes or in other words with the intention of producing an effect upon the election. This view receives support from the fact that the expenditure involved is not included in the return of election expenses and the whole transaction is denied both in the written statement and in the evidence on behalf of the respondent. We find that this is a case of corrupt treating by Radhashyam Naik as agent of the respondent.

The remaining item is the feeding at Basudebpur. Banchhandhi Mahanti, the respondent's agent, is charged with this. The petitioner's case is that a number of voters was fed on the 30th November at the dak bungalow at Basudebpur. Banchhandhi Mahanti was admittedly the respondent's polling agent at Basudebpur, and he occupied the district board inspection bungalow (which is also the dak bungalow) on the 29th and 30th November. He himself is a member of the district board and chairman of the Bhadrak local board. He applied in this capacity on the 19th November, 1926 to have both the bedrooms of the Basudebpur bungalow reserved for both the days (29th and 30th) and he remitted the sum of Rs. 2 as rent. On that the chairman of the district board, (namely, the respondent) passed an order on the 24th November that the district engineer might be asked to reserve the bungalow. The letter issued shows that only one room of the bungalow was reserved for the 29th and 30th. The visitors' book shows that Banchhandhi Mahanti occupied the bungalow from 7 A.M. of the 29th till 3 P.M. of the 1st December, the last day's occupation being put down as "on duty". The sum of Rs. 2 remitted by him as rent does not appear to have been included in the respondent's return of election expenses. The questions that naturally raise suspicion in one's mind are—why did he seek to reserve the whole bungalow and where was the necessity of such a long occupation? Again although Banchhandhi is charged with the offence of feasting the electors as the respondent's agent, it is significant that he was neither summoned by the respondent nor produced by him to explain away any of these suspicious circumstances arising against him. This suspicion is deepened when it is remembered that the cost of reservation is not shown by the respondent in his return of expenses.

Then we have the positive testimony of six witnesses who swear to the feasting at Basudebpur dak bungalow. One of them Bipin Behari Ray an Excise Sub-Inspector was the senior polling officer at the Basudebpur polling station and occupied a part of the dak bungalow. He deposes as follows :—

“ The feeding took place in Banchhandhi Babu's room as well as in the maidan and outhouses. Banchhandhi Babu was feeding the people. I saw some 20 or 30 men being fed in the morning and over 200 men in the evening The tables were brought in two carts on the 29th afternoon. These were kept inside the room occupied by Banchhandhi Babu.”

It is true that this witness did not report this affair to the presiding officer but he explains that he did not know that the feasting was illegal. The only suggestion made against him is that the present petitioner is an opium vendor in the town of Bhadrak. We fail to see why a sub-inspector of excise would perjure himself in this case, and we think we should accept his testimony and that of the other witnesses on this point, especially as they are corroborated by the probabilities and circumstances arising out of the reservation of the bungalow referred to above. In fact the evidence is practically one-sided.

The evidence on behalf of the respondent to disprove this allegation consists of the sole testimony of one Shayamanda Padhi who was a voter at Basudebpur and is a teacher at the Sanskrit pathshala in village Eram (which also is Banchhandhi Babu's village). He proposed Upendra and Lakshmi Narayan Padhi who, together with the respondent, were congress candidates for the last district board election. Thus he is not independent. On the other hand, Uma Prashad Padhi, deposes that he saw some 400 or 500 persons being fed. Gopal Padhi, who is one of the persons named by the respondent in schedule D of his return as having received Rs. 4 as travelling expenses swears that 200 voters were fed. He names some of them. Another witness says he saw about 100 voters being fed. There can be no manner of doubt that feeding on an extensive scale was carried on here. As pointed out in Hammond's "Indian Candidate and Returning Officer" at page 134, a candidate may properly feed those persons who are assisting him in the conduct of his election, but expenditure so incurred should be included in his declaration of expenses. In this case the return makes no mention of the feeding expenses. If an insufficient return be transmitted, it is evidence of knowledge on the part of the election agent that the omitted payments were corrupt (Parker's Election Agent, 3rd edition, page 458). The expenditure for the refreshment at Jai Sahy's shop and at Basudebpur dak bungalow was not a trifling amount and we cannot possibly suppose

it was omitted by accident. It is impossible to avoid the conclusion that these items were omitted purposely in order to conceal the fact of corrupt treating of the voters.

We find that the respondent's agent Banchhandhi Mahanti at Basudebpur and Radhashyam Naik at Bhadrak arranged for the refreshment of voters and gave feast and entertainment to them with the corrupt intention of influencing the voters.

It was urged on behalf of the petitioners that the return of election expenses was false in several particulars including the omission of the cost of supplying refreshment and food. In respect of the latter the report is as follows :—

“ It is urged on behalf of the respondent that as it represents an illegal item of expenditure, namely, treating, it is not required to be shown in the return which according to him is meant for legitimate expenses only. Rule 19, sub-rule (2) of the Bihar and Orissa electoral rules provides that the return shall contain a statement of all payments made by the candidates or by his election agent or by any person on behalf of the candidate or in his interest for expenses incurred on account of, or in respect of, the conduct and management of the election. Thus this rule does not qualify the term ‘ expenses ’ by the expression ‘ legal ’. Moreover, schedule IV, note 1, refers to *all* expenses. Also form XIX of return of election expenses shows that there must be entered in part K *all* expenditure incurred and payment made by the candidate or by his election agent or by any person on behalf of or in the interest of the candidate in connection with the election and not included in any of the previous parts. Also the form of declaration which has to be attached to the return and has to be signed by candidate or by his election agent (in accordance with schedule IV of the rules) shows that no expenses of any nature whatsoever which have been incurred for the purpose of the candidature are to be excluded from the return. The purpose of the return is evidently to check and control illegal expenditure. Therefore we consider that we should not read into the rules, the schedule, and the form, the word ‘ legal ’ before ‘ expenses ’.”

Reference was made by the learned vakil for the respondent to Parker's Election Agent at page 422 which runs as follows :—

“ An election expense is one ‘ incurred on account of or in respect of the conduct or management of an election ’. These words are used throughout the Act when dealing with legal expenses, larger words (‘ for the purpose of promoting or procuring the election of a candidate ’) being used in relation to illegal expenditure.” As rule 19(2) of the Bihar and Orissa electoral rules refers to the expenses incurred on account of or in respect of the conduct or management of an election, it is urged that only legal expenses are intended to be included in the return. However, Parker at page 456 mentions that “ all expenses paid on account of, or

in respect of, the conduct or management of the election, no matter by whom incurred, and whether for a legal or an illegal expense, must be returned". Whatever may be said on the general question it appears to us clear that expenses for feasting in connection with an election must be returned. Feeding is corrupt when done with the intention of influencing election. It may under certain circumstances, be harmless, for example, no man is bound to abstain from harmless hospitalities especially if they are customary because an election is pending. (Fraser, page 116.) No one would think it reasonable to draw the conclusion from the mere giving of a glass of sherbet to some old man coming from a long distance, that it was done with any intention of influencing the election. Also a candidate may lawfully feed the persons who are assisting him in the conduct of his election. Again the term "gratification", as defined in the explanation to clause 1 of schedule V of the Bihar and Orissa electoral rules, excludes the payment of expenses *bonâ fide* incurred for the purposes of election and duly entered in the return of election expenses. Therefore the question whether feeding was or was not confined to workers, and whether it was done on an extensive scale and with a view to influence the election is a necessary aspect for consideration, and therefore it seems necessary to include such expenses in the return. In the *Hartlepoons'* case (6 O'Malley and Hardcastle, page 1), Mr. Justice Philimore observes at pages 9 and 10 that the employment of any people for hire to walk about and parade the streets and show their colour so as to assist in the return of a candidate is an illegal employment, and although the expenses incurred on that account are illegal he held the expenses, if incurred by an agent, are expenses in the conduct and management of the election. He observes "It has been said there are cases where expenses may be incurred for promoting, or procuring the election of a candidate, which are not expenses incurred in the conduct or management of the election. That may be so if they are incurred by persons who are outsiders and not agents, because those persons have not the conduct or management of the election, but if they are incurred by persons who take a share in the conduct or management of the election, it would be very difficult to say that they are not expenses in the conduct and management of the election, being, as they are, confessedly expenses incurred for the purpose of promoting or procuring the election of the candidate. At any rate in this case we have no doubt that these expenses are properly described as expenses in the conduct and management of the election." Similarly we hold that expenses for entertainment by an agent of the respondent (as in the present case) must be described as incurred in the conduct or management of the election. The omission, therefore, to include such expenditure makes the return false.

The sum of Rs. 80 consists of two different amounts of Rs. 55 and Rs. 25 shown in part A as *personal travelling* expenses of the candidate

paid during the period 10th to 29th November. No vouchers have been furnished on the ground (stated in paragraph 18 of the written statement) that "they are expenses of obtaining tickets from the proprietor of the taxi service or his agent incurred by the respondent or his *agent or canvassers* and no vouchers are obtainable in respect thereof". Thus the return is *prima facie* incorrect. The expenses for agent or canvassers, if included within this Rs. 80, should have been shown in different parts, separately. In the next place, it is in evidence no tickets are sold in the taxi service. It is unlikely that a particular owner's taxi will be engaged for ten successive days and the fare paid after each trip. It has been shown that at least one of the taxi owners, namely, Ali Aktar, was not paid in small sums but had his dues unpaid till at least the latter part of January, 1927. Therefore the voucher should have been given. The return was sworn to on the 6th and filed on the 8th January. At that time payment to Ali Aktar had not been made. Thus the return is false in material particulars.

For reasons given we hold that the return of election expenses submitted by the respondent is incorrect, false in material particulars within the meaning of sub-rule 4 of rule 22 of the Bihar and Orissa electoral rules.

The "treating" has according to us been done by the respondent's agents with the intention of influencing the result of the election and is a corrupt practice falling within part I of schedule V of the electoral rules and comes within the purview of clause 44(1) of the electoral rules.¹ There is no plea by the respondent and no proof, that the case falls within the exceptions referred to in sub-rule (2) of rule 44. As such the election becomes void apart from any question as to how far this treating has materially affected the result of the election. The election is, therefore, liable to be set aside.

The original petitioner cannot be declared elected as he has withdrawn from his petition. The petitioner is entitled to have the election set aside. The charge of filing an incorrect and false return, will not, by itself invalidate the election but will serve to disqualify the respondent subject to the exercise of the right of removal of the disqualification by the local Government under the proviso to rule 5, sub-rule 4 of the Bihar and Orissa electoral rules and may eventually lead to the seat being declared vacant.

For the foregoing reasons—

- (1) We find that corrupt practices of bribery by treating as defined in the explanation to rule 44 and specified in clause 1 of part I of schedule V have been committed by

¹ Now section 1 of the first schedule read with paragraph 7 of part III of the Corrupt Practices Order, 1936.

Banchhandhi Mahanti and Radhashyam Naik, agents of the respondent. A reasonable opportunity of showing cause why their names should not be mentioned in our report was given to them but the cause shown by them is unsatisfactory ;

- (2) We are not prepared to recommend the exemption of the persons named in paragraph (1) above from any disqualification they may have incurred ;
- (3) We hold that the election of the respondent is void under rule 44 (1) (b) of the electoral rules ;
- (4) We report that no person has in our opinion been duly elected ;
- (5) We further hold that the return of election expenses filed by the respondent is false in material particulars, and thus the respondent has rendered himself liable to the disqualification mentioned in rule 5, sub-clause (4) of the Bihar and Orissa electoral rules.¹

¹ Now paragraph 5 of part IV of the Corrupt Practices Order, 1936.

CASE No. XVI
Ballia District (N.-M.R.) 1920

GAURI SHANKAR PRASAD *Petitioner,*

versus

(i) THAKUR HANUMAN SINGH .. }
(ii) RAJA RAJENDRA PRATAP NARAIN DEVA OF } *Respondents.*
HALDI.

It is a question of fact, to be decided on the evidence produced, whether a statement in relation to the personal character or conduct of a candidate is believed by the publisher to be false or not believed to be true.

It is admitted by the parties present before the court that there were only three candidates for election, namely, the petitioner and the two respondents.

The Commissioners found that the petitioner was the only candidate who was duly nominated and therefore it followed that the petitioner should have been declared to have been duly elected without the holding of a poll.

They then discussed whether the facts alleged in the recrimination, if true, would invalidate the petitioner's election.

The recriminatory charged reads as follows: "Did petitioner or his agent, Rameshwar Sharma, publish the leaflet, exhibit L-1, as alleged by respondent 1 and does it constitute false statements within the meaning of schedule 4, part I, rule 4?"¹

In the recriminatory statements, paragraph 1, it is written: "Petitioner's agents, representatives and a large number of other persons apparently engaged by the petitioner were found carrying and distributing broadcast leaflets containing false accusations against the respondent's personal character."

Exhibit L-1 is one of the leaflets here referred to. •

In the replication the petitioner has written as follows:—

"Paragraph 1 is admitted only so far that some persons fully acquainted with the doings and actions of respondent 1 prepared and signed a document headed 'Khula patra ka khula uttar no. 1' (open reply no. 1 to the open letter) by way of a reply to an open letter published by respondent 1 calling upon the voters to vote for him. The petitioner believing them to be true, got them printed and they were distributed as desired by the signatories. The respondent no. 1 admitted most of the allegations contained therein and offered explanations in another printed circular distributed by his men broadcast over his signature under the heading 'Akshepon ka khula hua uttar no. 2' (open reply no. 2 to the allegations), addressed to the said signatories. He also published a second open letter addressed to the voters. The said document herein first above-mentioned could not and did not amount to a corrupt practice on the part of the petitioner or his agents."

On April the 2nd last before this court it was stated on behalf of the petitioner as follows: "Rameshwar Sharma was petitioner's agent. He did not publish exhibit L-1, nor did the petitioner. The same remark applies to exhibits L-2, L-3 and L-4."

Up to this date therefore it appears that the petitioner denied having published the document, exhibit L-1, and he ascribes its publication to "some other persons fully acquainted with the doings and actions of respondent 1", who prepared and signed the document.

¹ Section 5 of part I of the first schedule Corrupt Practices Order, 1936.

On May the 3rd before this court the petitioner stated : " I admit publication of exhibits L-1, L-2, L-3, L-4 and L-6."

It is clear, therefore, that the petitioner has changed his attitude in regard to the document, exhibit L-1. At first he denied responsibility for it and now he admits that he published it himself and therefore is responsible for its contents.

The respondent 1 has relied on a number of entries in exhibit L-1 and evidence has been given in regard to such entries. The circumstances referred to in these various entries differ very much in importance. There are, however, two entries which state facts, which, if believed, would undoubtedly be calculated to have prejudiced the respondent 1's election. The first of these entries is entry no. 3, the translation of which is as follows :—

" In 1917 and 1918 when the terrible Ganges floods had occurred and all the crops were destroyed south of the railway line and most of the houses in villages had fallen down, and our mothers and sisters had to pass time by standing in water which was in some places waist deep and in others thigh deep, was it not you who spent Rs. 60,000 on suits for the recovery of rent ? It is heard that you yourself admitted that the tenantry had to spend 3 or 4 lakhs of rupees in defending those cases. What harm would it have caused you or your updesbaks (preachers), who go about crying that small disputes should be settled by *Panchayat*, if you had settled those cases between the Raj and the tenantry by *Panchayat*, and thereby saved the poor tenantry from expenses and numerous troubles, but you never wanted such settlement. Do you ever do any good thing which you promise ? "

The respondent 1 is the manager of the Dumraon Raj which is situated to a considerable extent in the Ballia district. The charge made against him is that after the serious floods, which as a matter of fact occurred in 1916 and 1917, so far from his doing his best to help the tenants in their distress he utilized the opportunity to bring suits against them for arrears of rent and thus showed the cruelty and callousness of his character in relation to the tenant population.

The respondent 1 has produced evidence which shows that the accusations made against him are entirely false. So far from having oppressed the people he did his best to help them. Relief was organized. The villages were visited in boats. The estate spent Rs. 50 a day in providing medicine and food and other necessities and nothing like Rs. 60,000 was spent on rent litigation. The actual figures have been extracted from the estate account-books and they show that the expenses incurred by the estate in rent litigation were as follows :—

	Rs.
For 1324 fasli October the 1st, 1916, to September the 30th, 1917	16,905
For 1325 fasli October the 1st, 1917, to September the 30th, 1918	1,139
For 1326 fasli October the 1st, 1918, to September the 30th, 1919	1,471

If the years 1324 and 1325 are taken together the total amounts to Rs. 28,300. If the years 1325 and 1326 are taken together the total amounts to Rs. 23,111.

These totals are very different to Rs. 60,000 and it may be noted that the figures given for the respondent 1 included an area greater than the area spoken of by the petitioner in exhibit L-1. It includes all the area mentioned by him together with some additional villages which were also affected by the floods.

In this connection it is interesting also to note that in 1324 fasli 1,309 cases of rent litigation were instituted, in 1325 fasli 939 and in 1326 fasli 867.

We find, therefore, that the accusations made in entry 3 of exhibit L-1 are false statements and they are undoubtedly statements which, if believed, would have prejudiced the respondent 1's election.

The other entry in exhibit L-1 to which we refer is entry no. 4. In the translation it is as follows :—

“ Have you ever paid attention to the young cows, heifers which are sold to butchers every year in the Dhanus Jug that is, Sudhist Baba's fair, which sale you can stop? Is it not you who has introduced the sale of animals in the said fair ? ”

The respondent 1 has produced evidence which we have no hesitation in believing to show that the Sudhist Baba fair has been in existence for 30 or 40 years, that cattle were sold at the fair from the beginning, and that a certain number of butchers have always been known to attend the fair in disguise to purchase cows for slaughter. It is entirely untrue to say that it was the respondent 1 who introduced the sale of animals including cows at the fair, or that the conditions of sales of the animals at the fair are in any way different since he took charge of the Dumraon estate. The evidence shows that butchers attend in small numbers and in disguise. The sales of cattle have very considerably increased in recent years. It is obvious that it would be almost impossible to prevent sales to butchers if the butchers made their purchases in the guise of ordinary Hindu purchasers. It is clear that the respondent 1 is in no way responsible for the sale of cows to butchers at this fair, and it is unreasonable to expect such sales to be prevented.

We find, therefore, that the accusation is false. At the same time if it were believed, it would undoubtedly prejudice the respondent in the minds of the people of Ballia. The vast majority of the population of that district is admittedly Hindu and it is a matter of common knowledge that it is a district where the question of cow-killing has always aroused considerable excitement.

These two instances are the most important of the instances mentioned in exhibit L-1. Having found that these two instances are

false statements, it is unnecessary to consider other instances of less importance.

The only witness produced by the petitioner is the petitioner himself. It will be remembered that in the first instance the petitioner refused responsibility for exhibit L-1. He said that it had been prepared by other persons who were acquainted with the facts and he definitely denied publication either through himself or his agent. At a subsequent date, however, the petitioner admitted that exhibit L-1 was published by himself. He makes practically no attempt to show that the charges in exhibit L-1 are true, and, as already stated, we have no hesitation in finding that the two principal accusations have certainly no basis of truth in them.

The petitioner, however, maintains that it has not been shown that he either believed the statements in exhibit L-1 to be false or did not believe them to be true. According to him, he made enquiries which convinced him that the charges were true, and he therefore published exhibit L-1 in the *bona fide* belief that the allegations made therein were correct.

We are unable to exonerate the petitioner. We find that he published exhibit L-1 which contains false statements, and we find that there is nothing to show that he had any reasonable grounds for believing the statements to be true or for not believing them to be false. In his evidence he stated "I was told by many of the tenants of the Dumraon Raj, by schoolmasters and respectable gentlemen and from them I learnt that the allegations made in exhibit L-1 were true. These facts I heard before exhibit L-1 was written . . . I did not publish exhibit L-1 until I had made enquiries. I enquired from Virendra Vidyarthi, resident of Doaba, and also when I visited Bansdih for the second time I enquired from two of the signatories, Babu Gajadhar, Bisheshar Prasad, Narain Singh and Babu Gobind Prasad Singh. I also visited Bairia and made enquiries from Pande Shiva Shankar Prasad and others. Bairia is in the Doaba but not in the Dumraon Raj. The men I have mentioned are big zamindars. I have not summoned them. They were summoned by the opposite party but not produced".

Exhibit L-1, it appears according to the petitioner, was actually written by one Babu Brij Bihari Singh, B.A. of Chakia. He says this gentleman "was introduced to me after my first meeting at Raniganj early in June, 1920. He had also presided over an earlier meeting held on behalf of respondent 1 at or near the same place and he had also criticized, he told me, the respondent 1 as manager of the Dumraon estate. Afterwards this same Brij Bihari sent me a draft of exhibit L-1".

From this statement of the petitioner it is clear that he knew from the very beginning that exhibit L-1 was actually written by Babu Brij Bihari Singh and written by him alone. In his replication he has stated

that it was prepared and signed by a number of persons who were acquainted with the facts of the case. The petitioner attempts to explain the wording of the replication by saying that he meant that one person prepared exhibit L-1 and several persons signed it. We are not convinced by this explanation. The petitioner clearly gave a different version of how exhibit L-1 came into existence in his replication and now in these proceedings he had changed his position. In this connection it is very significant to note that it was not until May the 6th that this court was informed by the petitioner of the name of Babu Brij Bihari Singh. On that date he was represented as a most important witness for whom a commission should issue as the petitioner had only then discovered that he was absent in Burma. The same Brij Bihari Singh was obviously according to the petitioner's own showing a man of very unstable views. He is represented as having agreed to preside over a meeting held on behalf of respondent 1, but when he came to do so he made hostile criticisms against the very man in whose behalf the meeting was being held and subsequently he joined the side of the petitioner. A man of this nature would arouse suspicion as a matter of course, more specially when he refused to sign himself the document exhibit L-1. The petitioner says that he asked him to do so but Babu Brij Bihari Singh refused on the ground that he was afraid of the vengeance of the Raj officials. If he was afraid to sign, there is no explanation as to why he was bold enough to make hostile criticisms against respondent 1 at a meeting actually held in support of respondent's candidature.

Two of the signatories on exhibit L-1, Babu Gajadhar, Bisheshar Prasad, Narain Singh and Babu Gobind Prasad Singh, were summoned as witnesses by the respondent 1. They were not produced in court but the petitioner made no attempt to have them placed before the court as his own witnesses. These were the two principal men whom the petitioner says he relied upon for the truth of exhibit L-1. He had an opportunity of producing these gentlemen before the court. He failed to avail himself of this opportunity with the result that there is nothing on the record to support his statements.

There are ten signatories of exhibit L-1. Of these, eight live in Bansdih which apparently is situated at a very considerable distance from the Doaba where the floods occurred and where the Sudhist Baba fair is held. The allegations in exhibit L-1 were made against respondent 1. The petitioner knew very well that respondent 1 was a gentleman of considerable standing who had occupied an honourable position for many years. Accusations against his personal character should necessarily have been very carefully examined before being accepted. The writer of exhibit L-1, Babu Brij Bihari Singh, refused to sign the document himself although, according to the petitioner, he had openly made a speech against respondent 1. Of the ten signatories to exhibit L-1,

eight belong to Bansdih and there appears to be no reasonable explanation why they should have had any special knowledge of the facts alleged in exhibit L-1. Of the remaining two signatories the last is Babu Kunj Bihari Singh of Chakia. This gentleman the petitioner had defended in proceedings brought against him for perjury. He was actually in Lucknow during the course of this case and he was sent by the petitioner to Ballia with the summonses for the petitioner's witnesses. The petitioner, however, has not thought fit to produce this witness before the court.

Many other criticisms could be made of the petitioner's attitude in regard to exhibit L-1. We find that he took no reasonable precautions to satisfy himself of the truth of the allegations made in that document. We find therefore that he had no reasonable grounds to believe that the statements made in exhibit L-1 were true or for not believing that they were false.

Under the circumstances, we decide issue 9 against the petitioner.

As a result of our findings on the various issues we report that the respondent 1 has not been duly elected. We also find that the petitioner is guilty of corrupt practices as defined by schedule IV, part I, paragraph 4, and is therefore debarred from being declared elected himself. We order that parties shall pay their own costs.

Under rule 45 of the electoral rules we find that it has been proved that the petitioner has committed a corrupt practice as defined by schedule IV, part I, paragraph 4, and we do not recommend that he be exempted from any disqualifications he may have incurred on this account under the rules.

Proceedings against respondent 2 were *ex-parte*. As far as he is concerned, we report that he was not duly nominated.

CASE No. XVII

Ballia District (N.-M.R.) 1931

(UNITED PROVINCES LEGISLATIVE COUNCIL.)

DAHARI DHOBI *Petitioner,*

versus

RAI BAHADUR SARJU PRASAD SINGH .. *Respondent.*

Signature to a nomination paper includes a thumb-impression or the making of a mark.

THE returning officer rejected the petitioner's nomination because he had put only his thumb-impression to the declarations required by the rules instead of signing his name to them.

The Commissioners reported :—

The main question for decision is whether a person who puts his thumb-impression to a declaration can be said to subscribe it. "Subscribe" means primarily "to write under something" but it is clear to us that the word is in the present connexion synonymous with the word "sign". This word is defined in the General Clauses Act (X of 1897) and in the United Provinces General Clauses Act (I of 1904) as follows :—

"'Sign' with its grammatical variations and cognate expressions shall with reference to a person who is unable to write his name include 'mark' with its grammatical variations and cognate expressions."

Even if neither of the two Acts applies, on strict interpretation, to the rules with which we are dealing, we still have no doubt that the definition expresses the meaning of the word as generally understood in common parlance and in legal phraseology. We have, therefore, to decide whether there is anything in the rules themselves which might lead us to suppose that the words "subscribe" or "sign" are used in them in any particular or restricted sense. Our attention has been drawn to regulation no. 21 of the regulations for the election of members to the Legislative Council of the United Provinces and also to the form of signature slip to which that regulation refers. The relevant words are :—

"The name of every person presenting himself to vote and his number on the electoral roll shall be entered on a slip in form 4 attached to these regulations and such person shall thereafter, if he is literate, sign his name in the column provided for that purpose or, if he is illiterate, fix his thumb-impression thereto."

In the form of the signature slip there is a column which is headed "Signature of voter, if literate, or thumb-impression of voter, if illiterate". The suggestion is that the framers of the regulation intended to draw a distinction between a signature and a thumb-impression and that by signature they meant the signing of a name as distinct from the making of a mark. It is contended that it would have been sufficient to use the word "signature" alone if that word included the making of a mark. The argument does not appeal to us. Under the definitions in the General Clauses Act the word "sign" with reference to a person who can write his name means to write a name. It is only with reference to a person who is unable to write his name that the word includes the making of a mark. It is obvious that the intention of the framers of the regulation was that a person who would be entitled to make a mark should make a mark only of one kind, namely, a thumb-impression, because probably

such a mark is easily identifiable and would effectively prevent personation. If they had omitted any reference to a thumb-impression, a person who was unable to write his name would have been entitled to make a mark which would not have been easily identifiable. It does not appear, therefore, that there was any intention to use the word "signature" in a sense which would exclude the making of a mark. Reference may be made to regulation no. 8(6) of the regulations for the election to the Legislative Council of the United Provinces of Agra and Oudh of members for the Agra landholders' constituency which says "If an elector is unable to read or write . . . the attesting officer shall assist him in such manner as may be necessary to . . . sign the declaration on the back thereof". The declaration is given in form 4 and is as follows :—

"I hereby declare that I am the person whose name appears. no. on the electoral roll of landholders for the election to the Legislative Council of the United Provinces of Agra and Oudh as member for the Agra landholders' constituency of the. and. divisions."

It is quite clear that the word "sign" in this regulation is intended to include the making of a mark. We have no hesitation in holding that the word "subscribe" in rule 11 of the electoral rules is used in its ordinary sense to include the making of a mark. Furthermore, if we were to hold otherwise, the necessary consequence would be that all illiterate persons would be disqualified as candidates for election as members of the Council. The disqualifications for being elected are given in rule 5 of the electoral rules and do not include illiteracy. Rules for disqualification should be strictly interpreted, and we are of opinion that a specific rule upon this subject would have been made if there had been any intention to disqualify persons who were illiterate. It has been urged that illiterate persons are disqualified for election as members of district and municipal boards and that *a fortiori* they should be disqualified for election as members of the local Legislative Council. This is a question of policy with which we are not concerned and we cannot fail to point out that the disqualification is specifically mentioned in the United Provinces Municipalities (Amendment) Act, 1922, and the United Provinces District Boards Act, 1922. This fact strengthens our conviction that the electoral rules would have specifically mentioned illiteracy as a disqualification if it had been intended that illiterate persons should be excluded from the Legislative Council. Finally, we may say that the interpretation which the returning officer has placed on the word "subscribe" would exclude not only persons who were illiterate but also persons who owing to temporary physical disability as the result of accident were unable at the time to sign their names to the declarations required by rule 11(3) and rule 11(5). This, in our opinion, would be a startling result. We hold that the petitioner by appending his thumb-

impression to the necessary declarations complied sufficiently with the provisions of rule 11 of the electoral rules and that his nomination was improperly refused. We hold further that it may be presumed, as there were only two candidates nominated, that the improper refusal of the petitioner's nomination materially affected the result of the election. The result is that the election of the respondent, the returned candidate, is void. Our report, therefore, is that the respondent has not been duly elected and nobody else claims the seat.

It does not appear that the petitioner's nomination was refused on the objection of the respondent, and in the circumstances we recommend that the parties shall pay their own costs.

CASE No. XVIII

Bareilly City (N.-M.U.) 1924

(UNITED PROVINCES LEGISLATIVE COUNCIL.)

BABU CHHAIL BIHARI KAPUR *Petitioner,*

versus

THAKUR MOTI SINGH *Respondent.*

The withdrawal of a criminal charge was held to be the receipt of a reward for voting and procuring votes and therefore an act of bribery.

A canvasser whose abolished post was revived was held to have received a reward and therefore to have committed a corrupt practice. The candidate who procured the rescission of the abolition of the post was held to be guilty of undue influence.

The wholesale employment of municipal staff and school teachers was such as to prove that the election was not a free election. Para 7 (1) (d) of part III of Corrupt Practices Order, 1936.

THE petition contained charges of bribery, undue influence, publication of false statements, etc.

The allegation of the petitioner is that "with the object of inducing one Lala Ram Mohan Lal (voter no. 4113) and his son Lala Birj Bhukan Lal (voter no. 3976) to vote for the respondent, the latter, on (or about) the 30th November, 1923, offered a gratification to the said Ram Mohan Lal in that he told him that by using his influence with his friend Babu Jia Ram Saxena, municipal chairman, he would procure the withdrawal of the prosecution under sections 420/467, Indian Penal Code, which prosecution had been instituted against the said Ram Mohan Lal and his said son by the said municipal chairman and which was then pending in the court of the Joint Magistrate, Bareilly. In pursuance of this understanding, Lala Ram Mohan Lal actively canvassed for the respondent and on the polling day acted as his polling agent". Further that "on the 11th December, 1923, the said Babu Jia Ram Saxena (one of the most zealous agents of the respondent) at the respondent's instance, compromised the case and actually withdrew the above prosecution a day before the date fixed for hearing. This was done by way of a reward to the said Ram Mohan for his vote and for his active work in furtherance of the respondent's candidature".

This is in effect an allegation that Ram Mohan Lal was bribed by the respondent to vote and procure votes for him with the connivance of his friend and partisan Babu Jia Ram Saxena, chairman of the municipal board, the bribe being an understanding that the criminal case pending against him would be compromised, as in fact it was, just after the election.

- Ram Mohan Lal is a well-to-do *Panseri* and the evidence has brought out that he has large numbers of relations who are voters. On these voters he was presumably in a position to exercise some influence.

A case was instituted under sections 417/468, Indian Penal Code, and the 30th November fixed for the first hearing. This date was subsequently altered at the request of Babu Jia Ram to 12th December and on 4th December a request to summon witnesses was presented by the board. The election for the Council took place on the 7th December.

On the 12th December an application (exhibit 3) was made by Ram Mohan countersigned by Babu Jia Ram to the Joint Magistrate for withdrawal of the case and was allowed the Magistrate holding, too summarily, to our thinking, that there was no case under section 468.

In the meantime, some days prior to his interview with Babu Jia Ram, Ram Mohan had started working for Thakur Moti Singh, at the instance, it is said, of Dr. Shiam Behari Gupta, also a municipal commissioner and a mutual friend of the parties. On 4th December Ram Mohan was actually appointed a polling agent and accompanied the respondent

in his canvassing. On the day of the poll he identified for him a large number of voters—among them presumably his numerous relations.

It is in evidence also that it was only on the eve of the poll that all the voters of Ram Mohan's mohalla decided to vote for Thakur Moti Singh. In this Ram Mohan's influence, though not directly proved, may fairly be inferred.

Such are the facts as disclosed in the evidence before us.

The question that we have to decide is whether any connection between the withdrawal of the criminal case against Ram Mohan and the act of the latter in voting, canvassing and working for the respondent is proved and if so whether such connection comes within the definition of bribery in schedule V, part I, section 1.¹

Direct evidence of any such connection would naturally not be forthcoming, and the failure of petitioner to show that the respondent offered a gratification to Ram Mohan, by promising to use his influence to procure the withdrawal of the criminal case need occasion no surprise.

But apart from this the close intimacy between Thakur Moti Singh and Babu Jia Ram—to which the former speaks and which the active part taken by Babu Jia Ram in supporting Moti Singh confirms—renders it very unlikely that Moti Singh was unaware of or did not connive at—even if he did not actually procure—the favour which Babu Jia Ram was showing to a man in whom as his canvasser and polling agent Moti Singh must have had a special interest. The municipal file shows that the case had attracted the attention of other municipal commissioners and Moti Singh must, we think, have known all about it.

In any case it is clear that Babu Jia Ram was an agent for Thakur Moti Singh in connection with the election. If then the withdrawal of the criminal case pending against Ram Mohan was in the nature of bribery as defined in schedule V an offence under part I of that schedule would be established.

Ram Mohan denies that he asked Moti Singh, to get his case settled or that Moti Singh told him that if he voted for him he would get his case settled. He did not strike us as in any way partial to the petitioner and we consider his evidence may be relied upon. He admits that he worked for Moti Singh in the hope that if Moti Singh got into the Council Babu Jia Ram would be so pleased that he would forgive him and withdraw the case, and this is, we think, the explanation of what took place. The event showed that Ram Mohan, if we may use the phrase, sized up the situation accurately.

We are not clear that the favour shown by Babu Jia Ram to Ram Mohan—a favour which, in the circumstances, we consider to have been most injudicious to use no stronger term—can bring his act within the

¹ Now section 1 of part I of first schedule of Corrupt Practices Order, 1936.

definition of bribery in schedule V in the absence of corrupt intention. We are ready to believe, having regard to Babu Jia Ram's character and position that he did not deliberately withdraw the criminal case as a reward to Ram Mohan for having voted or procured votes for Moti Singh, but when we note the singular coincidence between his sudden change of attitude in regard to the criminal prosecution of Ram Mohan and the employment of the latter by the respondent we feel that he allowed himself to be influenced, unconsciously it may be, by his knowledge of the services rendered by Ram Mohan to this friend Moti Singh. It is possible that he genuinely thought that the case had weak points and was therefore not worth fighting if he could get a substantial contribution to the municipal funds. In giving Babu Jia Ram, however, the benefit of the doubt we feel constrained to say that in our opinion he did not act with the firmness that his office demanded, and if his acts have been misinterpreted he has only himself to thank. We are, however, satisfied that in Ram Mohan's case the withdrawal of the criminal charge must be held to be the receipt of a reward for voting and procuring votes for Thakur Moti Singh and therefore an act of bribery as defined in part II (section 3) of schedule V.

We look on this case of Ram Mohan as an instance of the insidious influences which have been exerted in various ways by the dominant party in the municipal board to secure Thakur Moti Singh's election, the effect of which has been to deprive the election of its essential freedom.

The petitioner's case was set out as follows in the particulars of corrupt practices: "That with the object of including Mr. Mahtab Rai, municipal engineer (voter no. 3822), to vote for him and to generally procure for him the votes of other voters amenable to his influence, the respondent, about the middle of November, 1923, promised to use his influence as a municipal member for securing rescission of the municipal board's resolution whereby several months before the said board had resolved to abolish his post. Accordingly the said Mr. Mahtab Rai very zealously canvassed for the respondent, both on the polling day and on the day preceding thereto."

The evidence has not satisfied us that the respondent made any promise to Mahtab Rai to use his influence in the direction stated, and though the attendant circumstances give rise to suspicion, we consider that we should not be justified in holding that bribery as defined in part I of schedule V has been established. We therefore find the charge not proven as against the respondent. But we consider that there was a receipt by Mahtab Rai of a reward for his services in canvassing for Thakur Moti Singh which brings him within the meaning of section 3 of part II of schedule V.

We cannot resist the conclusion that this was a case in which influence was indirectly and unduly exercised on Mahtab Rai and through him

on the voters by the respondent, who made an unfair use of his position as municipal commissioner and member of the strong party of swarajists on the board.

On the 5th June the municipal board unanimously accepted a proposal made by a retrenchment committee that the services of Mahtab Rai be dispensed with and three months' notice was given to him.

On the 15th November the municipal board had before it the revised budget, but for reasons which are not apparent from the minutes decided to postpone its consideration till 10th December. At the adjourned meeting, which took place on 17th December instead of the 10th the board executed a complete *volte face* and cancelled all the retrenchments unanimously passed in June. It is not surprising to find the chairman saying on the 17th January that this "cancellation of retrenchment proposals is unfortunately liable to various interpretations". At any rate the effect of the resolution of 17th December was to reinstate Mahtab Rai. He had, if we may use a colloquialism, backed the right horse.

It is not, in our opinion, possible to hold that Mahtab Rai had supported Moti Singh from motives unconnected with the hope of favours to come. Nor can we, when we consider the strange coincidence of time between the canvassing of Mahtab Rai and his reinstatement, avoid the conclusion that the conduct of the municipal board, guided by their chairman and his swarajist colleagues, of whom the respondent was one, was calculated to encourage these hopes.

Mahtab Rai's influence in Bareilly was not confined to what was derived from his private social status. His position as municipal engineer, whose duty it was to receive and report on all building applications was one of considerable power. In our view the influence that executive officials such as a municipal engineer are in a position to exercise on voters cannot by any stretch of imagination be called legitimate, and we suggest that they should be forbidden to canvass or work for a candidate at any election—whether to the municipal board or to the Legislative Council. The mere fact of their doing this is bound to exercise an influence on the voters which, in the present conditions of Indian life, is reasonably calculated to interfere with the free exercise of their electoral rights.

There is in Bareilly a class of workers in wood and iron who are known as Maithals. Ram Lochan Shastri was president of the local Sanatan Dharm Sabha. It was proved that he had canvassed among all his caste-fellows and had held out hopes to the Maithals that he would raise them to the status of Brahmins. It appears that the Maithal community looked upon the election as an opportunity for their advancement in the social scale.

Evidence was given that on three occasions Ram Lochan Shastri threatened that if the Maithals did not vote for Thakur Moti Singh he would publicly proclaim that they were Sudras. In one of these cases

a witness deposed that in consequence of this threat his father abstained from voting. It was proved that Ram Lochan, who was an employee in a municipal school, took an active part in canvassing for the respondent, who did not repudiate his services, and therefore Ram Lochan Shastri must be regarded as the respondent's agent. The Commissioners found that this amounted to undue influence as defined in schedule V, part I, rule 2.

Dealing with the two allegations of personation, the Commissioners found that Kandhe Mal Sunar, voter no. 4924, admittedly voted twice. His name appeared at two places in the electoral roll. His plea was that he was told by one Seva Ram who was not produced, that he was entitled to a second vote.

Satis Chandra (P.W. 13) who identified Kandhe Mal at the polling station, was identifying voters for the respondent and was a clerk in the school in which the respondent was manager.

The Commissioners reported :—

The facts proved constitute, strictly speaking, undue influence as defined in schedule V, part I, rule 3 ; but we consider that owing to the error in the roll the breach of the rule is a technical one and in the peculiar circumstances we are not prepared to take cognizance of it.

The second case of personation related to a vote given by Shamlal, son of Ghamandi Lal, head clerk in the Grass Farm office. He was persuaded by one Badri, a pan-seller, to go to the Town Hall as Badri insisted that he had a vote. He was given a slip with a written number, and then Badri passed him on to another man who took him to a clerk who asked if his father's name was Bijai Singh. Shamlal replied that his father was Ghamandi Lal. The man who had brought him up said that the electoral roll was at fault. Shamlal was then given a signature slip which he signed, and the man to whom Badri had made him overtook him over to the polling room where he voted for Moti Singh, respondent. Shamlal could not identify the man who took him into the polling room, but it was clear that his application for a voting paper was abetted by the partisans of Moti Singh, who were at the respondent's " bistar " outside the polling place. His signature slip was not attested by an identifier as required by the rules, and his name did not appear in the electoral roll.

The Commissioners reported :—

We find it proved that Shamlal did vote as voter no. 3464, and that his application for a voting paper was procured through the agency of Badri, who is shown to have canvassed for the respondent and must therefore be regarded as his agent.

We find that the respondent has committed the corrupt practice of personation under schedule V, part I, rule 3 in respect of Shamlal through his agent Badri (panwala) and other agents unknown. We are not

satisfied that the witness Shamlal was guilty of corrupt practice and therefore do not propose to take further action against him.

The gist of paragraph 12 of the petition (A in the list of particulars) on which this issue is based is that the canvassing of certain municipal officials for the respondent and the employment of others as his helpers on the polling day produced an impression on the minds of municipal employees in general that it would be to their advantage to vote for the respondent, i.e. the exercise of their franchise was not free.

In the evidence and in the arguments the case has been carried somewhat further. The allegation of the petitioner, which the respondent has been at pains to controvert, and which indeed is hinted at in the petition, is that the utilization of municipal servants to canvass and work on the polling day for the respondent and the active participation of the chairman in the election have directly or indirectly influenced the voters and prevented a free election.

This raises an important point of principle, which so far as we are aware, has not previously been dealt with by judicial decision.

The evidence discloses the following facts :—

Babu Jia Ram, the chairman of the municipal board, was an enthusiastic supporter of the respondent. He canvassed for him, spoke at election meetings for him, and on the election day was present at the Town Hall polling station more or less continuously from 10 o'clock till 4 o'clock taking an active interest in the voting and sending messengers to fetch voters.

Babu Mahtab Rai, the municipal engineer, as set out above canvassed for the respondent and also worked for him on the polling day.

Municipal school teachers were employed to work for the respondent at the polling stations and were apparently utilized for fetching voters to record their votes (evidence of Babu Jia Ram).

At the Town Hall Dhananja Parshad, the headmaster of the Teachers' training school, says that he saw 20-25 teachers working for Moti Singh. Lala Bhurimal saw the same number of municipal employees at the Qila polling station "doing odd jobs for the respondent". Babu Kalicharan, a municipal commissioner and witness for Moti Singh, was "not prepared to repudiate the suggestion that municipal employees were working for Moti Singh at the polling station". Pandit Ram Lochan Shastri, a teacher in the E.I.M. school of which the respondent is the manager, used his religious influence, with a view to persuading voters of a certain caste to vote for the respondent.

To take first, the case of the municipal employees themselves.

Thakur Moti Singh has admitted that "the congress party has generally the predominating influence in the Bareilly municipal board".

The chairman and the two vice-chairmen are president and members respectively of the local branch of the Swaraj party of which the respondent was the nominee. The respondent himself is chairman of the municipal advisory committee. Clearly then it was to the interest of municipal officials to help Moti Singh. It was quite possible that those who worked for the respondent may have done so willingly on that account, but they could not have worked without Moti Singh's invitation or connivance. Thakur Moti Singh is manager of the E.I.M. municipal school and the chairman of the municipal education committee is also a swarajist. The wholesale employment of municipal school teachers in Moti Singh's election work on 7th December is therefore not without significance.

Incidentally their employment must have reduced Moti Singh's election expenses (which were borne by the Swaraj party) for no remuneration on their account is shown in his return of expenses.

Moreover, special circumstances existed which must have had a powerful influence on the minds of municipal school teachers. The resolution of the municipal board of the 5th June, 1923, had reduced by half the increments allowed to the staff of the W.I.M. and E.I.M. schools whose pay exceeded Rs. 40. This resolution was followed by numerous representations which were considered by a revision committee and rejected by the board on 1st October. The agitation, however, continued and the matter would presumably have come up when the revised budget was up before the board on 15th November, 1923. But the consideration of that budget was postponed from 15th November to 10th December—significant dates—and then on 17th December the resolution of 5th June was reversed. It is difficult to believe that these tactics had no influence on the municipal employees affected, and it is, we think, a legitimate inference that they were not in a position to exercise their franchise with freedom and independence when the question of the restoration of their allowances was being held over them. The interference with the free exercise of their electoral rights may not have been direct, but it assuredly was such indirect interference as is contemplated by section 2, part I of schedule V.

We must therefore hold that the petitioner has proved his charge under this issue.

The same view must be taken in regard to the general voter. "The law cannot strike at the existence of influence it is the abuse of influence with which alone law can deal." (Willes J., quoted in Hammond's Indian Candidate and Returning Officer, 1923 edition, page 143.)

The Indian voter is peculiarly susceptible to influence and it is doubtless for this reason that the Indian law as to undue influence is wider than the English law. Until the Indian electorate is more educated

this distinction must be maintained and enforced. The chairman of a municipal board must inevitably be a man of influence. He is invested with extensive executive powers affecting a large population. In fact the influence of a municipal chairman in an election for the representation of an urban area must be, if not greater than, at least as that of the Collector, who is forbidden to take any part in elections. We consider that he should be excluded from canvassing and playing the part of an agent at the poll for any candidate. Such participation constitutes in our opinion an abuse of influence. Should he be standing as a candidate himself he should be precluded from using as agents or canvassers the officials under his control. We think therefore that Babu Jia Ram's conduct in this election was open to criticism as interfering indirectly with the free exercise of electoral rights. We note that in correspondence with the petitioner's son—himself a municipal commissioner—on this subject, Babu Jia Ram admitted that he felt "it was not safe for any municipal servant to side with any candidate, whoever he might be" (exhibit E). We think it is unfortunate that he did not act up to these principles himself.

As we have said in discussing the case of Babu Mahtab Rai, our view is that neutrality should be imposed on all executive officials of a municipal board, in an election for the representation of the area over which their powers extend. This principle has been recognized in the case of Government servants. We consider that it should be extended to municipal and district board servants. We are unable to hold that the election of the 7th December in Bareilly for the Local Legislative Council was a free one. We find that rule 44 (1) (d)¹ is applicable and that the election must be declared void under that rule.

We have found that the petitioner has established charges of personation and of undue influence against the respondent and we hold that the election has not been a free election by reason of the large number of cases in which undue influence and bribery within the meaning either of part I or part II of schedule V has been exercised or committed [rule 44 (1) (d)].

We therefore recommend to His Excellency the Governor that the election of Thakur Moti Singh be declared void and that he be directed to pay the costs of the petitioner which we assess at Rs. 593.

Under the proviso to rule 47 we called on Babu Jia Ram Saxena, Babu Mahtab Rai, Lala Ram Mohan Lal, Pandit Ram Lochan Shastri and Badri to show cause why they should not be named in our report as having committed corrupt practices and they have appeared before us. Their explanations have not led us to change the views we have expressed in regard to their conduct. In view, however, of the fact that electoral

¹ Now paragraph 7 (1) (d) of part III of Corrupt Practices Order, 1936.

practice is in its infancy in this country and that no definite rule exists prohibiting the chairman or executive officials of a municipal board from actively supporting a particular candidate at an election, we consider that no stigma attaches to Babu Jia Ram Saxena, and recommend that he be exempted from any disqualification he may have incurred under the electoral rules. We recommend a similar indulgence in the case of Babu Mahtab Rai and Pandit Ram Lochan Shastri.

Recriminatory petition.

The petitioner having claimed the seat for himself, the respondent has filed a recriminatory petition under rule 42 to show that if the petitioner had been returned candidate his election would have been void, inasmuch as he was guilty personally and by his agents of various corrupt practices which are specified in a list attached to the recriminatory petition.

The Commissioners disbelieved the evidence regarding bribery and held that personation was not proved. On the remaining charge they reported :—

It is alleged by the respondent that on the 5th December, 1923, at a public meeting at Shahamatganj Babu Brij Bihari Mukhtar, the agent of the petitioner, stated that Thakur Moti Singh, being the secretary of the Hindu Sabha, was responsible for the opening of meat shops in Hindu mohallas.

Babu Ram Sarup, health-officer of the Bareilly municipality deposes that from his order refusing to grant him a licence for a meat shop one Abdul Aziz appealed to the board and that his appeal was allowed by the board in the middle of July or August. Since that time 18 new licences for meat shops have been issued, some of which are in Hindu mohallas. The petitioner argues that Moti Singh was absent from the board's meeting which decided the appeal of Abdul Aziz and that Brij Bihari's statement at the meeting at Shahamatganj was a mere criticism of Moti Singh's public conduct and not a statement of fact. There is no satisfactory evidence to establish whether the words by Brij Bihari at Shahamatganj were "meat shops were opened" or "Moti Singh got them opened" ("khul gayin" or "khulwa din"). There is only the respondent's own statement against that of Brij Bihari, for the respondent's witness Ram Sahai has been shown to have no reliable recollection of what was said at the meeting and his evidence must be disregarded.

We hold it not proved that the petitioner's agent published the false statement that Thakur Moti Singh got meat shops opened in Hindu mohallas. Moreover, had the words suggested been used, we think that the criticism that the respondent as a member of the municipal board, was responsible for the opening of the meat shops in Hindu quarters

would not fall within the meaning of section 4, part I of schedule V. In this connection we had the advantage of seeing the report of the election Commissioners in the *West Coast and Nilgiris* (see page 712), and we agree with the view expressed by them.

The result is that the recriminatory petition fails. This being so, and Babu Chhail Bihari having established that the election was not a free one, it becomes a question whether the petitioner who claimed the seat himself should be declared duly elected. It is urged on us that this follows as a matter of course. We are not prepared to accept this contention. In fact its acceptance might lead to an obvious absurdity in such cases where the petitioner is defeated by an overwhelming majority of votes and cannot therefore be said to represent his constituency. In this connection our attention has been drawn to the report of the election Commissioners in the *Dinajpur* case, 1924 (see page 341).

We agree with the Commissioners in their view that rule 34 might be amended so as to afford some guidance to petitioners as to the circumstances in which such a claim is proper. A petitioner who claims the seat himself should, we consider, be prepared to show that but for the acts of the respondent he would have received a majority of the votes recorded.¹

In the present case the number of votes cast for Babu Chhail Bihari Lal was only 900 as against 1,450 cast for Thakur Moti Singh. It has not been shown to us how many votes were lost to the petitioner through the election not being a free one, and we are not prepared to hold that but for the existence of undue influence Babu Chhail Bihari would have been returned.

We are therefore of opinion that Babu Chhail Bihari Capoor is not entitled to be declared duly elected and that there should be a fresh election. And this is our recommendation. We further recommend that Thakur Moti Singh be directed to pay Babu Chhail Bihari Kapur Rs. 100 as costs in respect of the recriminatory petition.

¹ This is now the law, *vide* paragraph 3(2) of part III of the Corrupt Practices Order, 1936.

CASE No. XIX
Bareilly City (N.-M.U.) 1925

NANHE MAL *Petitioner,*

versus

CHAUDHURI JAI NARAIN *Respondent.*

A recount will only be granted in cases which are substantiated by specific instances and by reliable *prima facie* evidence. *Tanjore* case quoted.

Evidence necessary to prove agency discussed. To establish the offence of personation a corrupt motive must be proved.

ALTHOUGH the petition contained many grounds for assailing the election of the respondent, issues were only framed on three charges. The first related to the manner in which the returning officer counted the votes, one alleged the exercise of undue influence, and two separate instances of personation were discussed. The election was held to be valid.

"The returning officer was the Collector of the district and the counting of votes was done partly in his court-room and partly in an adjoining retiring room. We made an inspection of these rooms and found that they were situated one behind the other with a door of communication in between. This door was admittedly open all the time that the counting was in progress. Twelve separate tables were laid out, six on the floor of the court-room and one on the dais, while the remaining five were in the adjacent room. The returning officer occupied a chair on the dais quite close to the communication door, so that he could have a clear view of what was happening in both rooms, while at every one of the twelve tables on which the votes were being counted sat a subordinate officer of the district—in all cases but two a Deputy Magistrate—who was assisted in the process of enumeration by two clerks. It is further admitted that one agent of each candidate was present all the time and kept moving about from table to table. The argument on behalf of the petitioner is that under the circumstances mentioned above the counting of votes was not done under the supervision of the returning officer as contemplated in sub-rule (6) of rule 14 of the electoral rules. It was contended that in order to satisfy the requirements of the rule just mentioned it was necessary for the returning officer to have every ballot-box opened and the papers contained in it sorted and counted in his immediate presence. As stated above this argument was advanced but half-heartedly, and we have no hesitation in saying that, in our opinion, it carries little weight. If this contention is accepted, the returning officer would be precluded almost entirely from taking any assistance. All that the said rule demands, in our opinion, is that the supervision of the returning officer should be sufficient to eliminate, as far as possible, all chances of a mistaken or false declaration of the result. This demand, we think, was fully satisfied by the conditions mentioned above, under which ballot-papers were counted in the present case. The total number of votes polled being only about 2,200, it is clear that, on an average, no more than 200 ballot-papers were sorted and counted at each table in the immediate presence of a responsible officer and the whole process was supervised by the returning officer himself. The chances of mistake or fraud were, therefore, very few indeed. In this connection certain admissions made by Ram Sarup, who was present at the counting on behalf of the defeated candidate, are not without significance. This witness admits that no doubt as to the correctness of

the counting arose in his mind until the result was declared, and that any doubt arose at all was due to the fact that at the end of the polling the agents of the defeated candidate believed that the chances of election were in their favour. Our attention was particularly drawn to the fact that, contrary to the provisions of the rule to which we have referred above, the returning officer permitted only one agent of each candidate to be present at the time of counting. That this was a non-compliance with the rule admits of no doubt, but we have not the slightest reason for holding that the result was materially affected thereby.

"The only other question that has to be decided in connection with this issue is whether the petitioner is entitled to a recount, and we have no doubt that the answer must be in the negative. We fully agree with the view taken by the election Commissioners in the *Tanjore* case (see page 675), that 'a recount will only be granted in cases which are substantiated by specific instances and by reliable, *prima facie* evidence'. It cannot even be pretended in the present case that these conditions are present."

The charge of undue influence was that an Honorary Magistrate named Akhtar Husain Khan—a friend and worker of the respondent—who owns some shops in the city, exercised undue influence on Sunder Lal, a tenant of one of these shops, by threatening him with ejection if he recorded his vote in favour of the defeated candidate. The petition contained no definite allegation that this Akhtar Husain Khan was an agent of the respondent, nor that he committed the alleged corrupt practice with the connivance of the respondent or some one of his agents. But an allegation to that effect was made when the pleadings were cleared and an issue was framed accordingly.

"Even at this stage there was not the faintest suggestion that the respondent actually accompanied Akhtar Husain Khan when the latter approached Sunder Lal. A statement to that effect appeared for the first time in the evidence of Bira Mal and Ganesh Prashad, the only two witnesses produced by the petitioner to support his case. We have no doubt that the part ascribed to the respondent is entirely an after thought. It was introduced in evidence simply because it was realized that even if the alleged corrupt practice by Akhtar Husain Khan was established, there would still be nothing to show any connection between him and the respondent. The evidence of the two witnesses named above is, therefore, clearly tainted with falsehood. This would be a sufficient ground for rejecting their testimony, even if we had nothing else to say against them. But besides being witnesses of no status who can be easily procured, they are fellow castemen of the petitioner, and seeing that there are clear indications of a touch of communal feeling in the present case, their statements are hardly worthy of serious notice."

The Commissioners further stated—

“ We do not consider it necessary to enter into any further details to show that the petitioner’s allegation is utterly false. We are content with remarking that we fully believe the testimony of Akhtar Husain Khan who has very emphatically and convincingly given the lie to the petitioner’s allegation. This issue is accordingly decided in the negative.

Two charges of personation were framed and discussed.

(i) At the polling station set up in the Government High School a person named Radha Kishan, son of Jugal Kishore, Khandelwal by caste, resident in Alamgiriganj, personated voter Radhe Lal, son of Chote Lal, Agarwal by caste, resident of Nayatola.

It will be noticed that the name of the father, the residence and the caste in the two cases were different. Although in support of Radha Kishan, the alleged personator, it was asserted that he was also called Radhe Lal and had a real uncle named Chhote Lal, so that there were reasonable grounds for believing that the disputed entry referred to him, though there was a mistake, by no means uncommon, in the column showing parentage, the Commissioners pointed out that “ where a charge of personation is laid, the onus of establishing every essential ingredient lies as heavily on the petitioner as it does on the prosecutor in any criminal case. Now it is a well-settled proposition of law that there can be no corrupt practice without a corrupt motive. It is therefore obviously the duty of the petitioner in the present case to establish that Radha Kishan, when he recorded his vote or that the respondent’s agent when he procured Radha Kishan’s vote, had a corrupt motive, or, in other words, that he could not have acted in the *bonâ fide* belief that Radha Kishan had a right to vote. Having carefully considered the whole of the petitioner’s evidence bearing on the point under consideration we have unhesitatingly arrived at the conclusion that it falls far short of the standard laid down above.

“ We shall now refer to an important fact which has not been mentioned so far but which, in our opinion, goes to the root of the whole matter and strongly militates against the theory of personation. This fact was disclosed by Ram Kishore—the first witness for the petitioner—who was the polling agent of the respondent and accompanied Radha Kishan when the latter applied for a ballot-paper. He stated that the discrepancy as to Radha Kishan’s parentage was brought to the notice of the polling officer before the latter issued the ballot-paper, and in support of this statement he added that the polling officer made a cross in the parentage column of the entry no. 4121 contained in the voters’ list for ward no. 7. This list was produced before us and we found that it bore out his statement. Radha Kishan, who has also been examined as a witness on behalf of the petitioner, clearly stated that he pointed out the discrepancy of his own accord. Now it appears to us that the

existence of the cross in the parentage column of the voters' list is a material fact which shatters the theory of personation. If the cross was made under the circumstances mentioned by Radha Kishan and Ram Kishore it is obvious that no question of personation arises at all, for no attempt was made to secure the ballot-paper in the name of Radhe Lal, son of Chhote Lal."

Finally, the Commissioners recorded the following opinion :—

"What we are primarily concerned with is not whether the disputed entry does or does not refer to Radhe Lal, son of Chhote Lal, but whether Radha Kishan and the respondent's agent did or did not honestly believe that the said entry referred to the former and entitled him to vote. We can only repeat that, after a consideration of all the points that arise in the case, we are convinced that, in applying for a voting paper, Radha Kishan had no corrupt motive but that he shared with the respondent's agents the belief that he was entitled to vote."

In an earlier part of the report the Commissioners stated :—

"We have considered the cumulative effect of the discrepancies referred to by the petitioner and we are not prepared to hold that their existence is by any means inconsistent with a *bonâ fide* belief in the mind of Radha Kishan and the respondent's agent that the former had a right to vote, whereas his conduct before the polling officer which we have discussed above is, to our minds, quite inconsistent with the idea of personation."

The facts relating to the second instance were very simple and for the most part undisputed. One Kunwar Bahadur had his name registered on two separate electoral rolls relating to two separate polling areas or wards. The polling station for the voters of both these wards was set up at the W.I.M. High School. This polling station contained four separate polling booths. Kunwar Bahadur first recorded his vote at one of these booths, and shortly after proceeded to another booth just opposite to the first and made an application for a second ballot-paper. The petitioner's case was that one of the polling agents of the defeated candidate having received information of the fact raised an objection before the polling officer who made inquiries and, finding that Kunwar Bahadur had already cast a vote, refused to issue a second ballot-paper to him. "The evidence bearing on this instance is very meagre. There is nothing but the statement of Manohar Lal to which we can turn for the exact circumstances under which Kunwar Bahadur applied for a second ballot-paper. Taking into consideration the fact that Kunwar Bahadur is a practising Mukhtar, it is not easy for us to hold that he made the second application in the *bonâ fide* belief that he was entitled to two votes because his name happened to be recorded in two separate electoral rolls relating to two separate wards. But as he has not been examined as a witness on either side and we have not considered it

necessary to ask him to explain his conduct, we are not prepared to say anything more than that his conduct is open to grave suspicion. The real question for decision is whether there was any connivance on the part of the respondent or his agent. On this point there is nothing but the evidence of Fateh Bahadur who identified Kunwar Bahadur on both occasions. The argument on behalf of the petitioner is that this Fateh Bahadur should be deemed to have been an agent of the respondent. We see no sufficient reason for accepting it. Fateh Bahadur clearly states that he had no sort of authority express or implied for identifying the voters on behalf of the respondents, but he did so simply because he sympathized with the respondent. The petitioner has led no evidence to prove that this Fateh Bahadur did anything else for the respondent except identify some voters on the polling day. We are not prepared

erely on the basis of this solitary act, to hold that Fateh Bahadur was the respondent's agent. Moreover, the evidence indicates that it was the respondent's agent himself Babu Lekhraj, vakil, who discovered the mistake and prevented Kunwar Bahadur's second vote being cast.

"It is clear therefore that even if we had held that Kunwar Bahadur's conduct amounted to a corrupt practice, still we could not have saddled the respondent with any responsibility."

CASE No. XX

Bareilly City (N.-M.U.) 1927

BABU CHAIL BIHARI KAPUR *Petitioner,*

versus

RAI BAHADUR BABU SHYAM SUNDAR LAL .. *Respondent.*

An Honorary Magistrate is not an "official" within the meaning of section 134 of the Government of India Act. The request for votes while in Court was not held to be undue influence.

Personation, if committed without the knowledge or connivance of the candidate or his agents, will not avoid the election. Evidence regarding defamatory statement and its publication discussed. The concealment of the expenditure incurred in publication of the statement criticized. The return of election expenses held to be fabricated. A "false" return means a deliberately incorrect return, or, in other words, corrupt motive.

THE petition contained a very large number of charges of personation, undue influence, bribery and the publication of false statements. It challenged the validity of the respondent's nomination, because the latter was a special magistrate and should therefore be considered a Government official. Lastly, it was urged that the return of election expenditure filed by the respondent was false in material particulars.

The Commissioners held that the nomination of the respondent was valid.

"The issue is based on the allegation that respondent is a special magistrate and must therefore be considered a Government official. Section 80-B of the Government of India Act on which reliance is placed is to the effect that an 'official' shall not be qualified for election as member of a Local Legislative Council. The term 'official' is defined in section 134 of the Government of India Act: 'The expressions "official" and "non-official" where used in relation to any person, mean respectively a person who is or is not in the civil and military service of the Crown in India. Provided that rules under this Act may provide for the holders of such offices as may be specified in the rules not being treated for the purposes of this Act, or any of them, as officials'. Rule 2 made under the said section lays down that the holder of any office in the civil or military service of the Crown, which does not involve both of the following incidents, namely, that the incumbent (a) is a whole-time servant of the Government, and (b) is remunerated either by salary or fees, shall not be treated as an official for any of the purposes of the Government of India Act. It follows that respondent who is an Honorary Magistrate and not a whole-time Government servant does not come within the prohibition of section 80-B of the Act."

Evidence was given to support two charges of bribery neither of which were proved. Ten instances were given of alleged exercise of undue influence. They included the assertion that the respondent canvassed in open court, and that this act of his constituted an attempt to interfere with the free exercise of their electoral right by the voters and amounted in law to general exercise of undue influence.

Petitioner examined three witnesses on this point. "The first is Brijbasi Lal. Mukhtar Brijbasi Lal says that he went to respondent's court in a case and the latter asked him to make endeavours on his behalf with regard to the coming election. This talk is said to have taken place in the presence of another mukhtar by the name of Brijbihari Lal who is petitioner's nephew. Brijbihari Lal has been examined as witness, but was not asked a single question in this respect. It is difficult to believe that respondent would carry on such a conversation in the presence of petitioner's own worker. Brijbasi Lal is a Kaisth and admittedly the Kaisth and Vaishya communities are not on good terms

in Bareilly. Ram Bahadur Lal, a Kaisth employee of the municipal board, is being criminally prosecuted and petitioner is appearing as his *vakil*. The witness admits that he is practically working under petitioner in connection with that case. Shib Sahai the second witness is also a Kaisth, but he does not say anything material to this charge. He deposes that he heard respondent speaking about the election in his court-room, in reply to questions put by others. He cannot say definitely what questions were put to respondent and what reply he gave. The third witness Lal Bahadur is also a Kaisth, and his story is that he had gone to respondent's court to enquire about the date in some case. Mukat Behari Lal, a *karinda* of the respondent, asked him to give his vote for the respondent. Respondent himself remarked that the witness was not against him. This remark was admittedly made when the latter was not holding his court. Lal Bahadur is a clerk of petitioner's *vakil*, Gopeshwar Babu, who is moreover related to the petitioner. The three witnesses thus appear to be partial to the petitioner, but even if believed, we do not think their evidence proves any case of undue influence.

"In this connection, we agree with the remarks in the *Habiganj* case (see page 393), made with respect to a Minister, and would adopt the reasoning given there as our own. We are not aware of any rule requiring an Honorary Magistrate to resign office before offering himself as a candidate for election. Respondent used to hold court in his own residential house and in the circumstances it was inevitable that he should to a certain extent combine canvassing with official work."

The Commissioners held that the petitioner had failed to prove a single case of bribery or undue influence.

There were 12 alleged cases of personation, in dealing with which the Commissioners took as the first point for decision the issue whether it is open to the respondent to raise the plea of good faith. "In English law a distinction is made between corrupt and illegal practices, but there is no such distinction under the Indian electoral rules. 'A corrupt practice is a thing the mind goes with. An illegal practice is a thing the Legislature is determined to prevent whether it is done honestly or dishonestly.' (Field J., in *Barrow and Furnace*: 4 O'M. & H., 77.) The definition of personation as given in section 171 (D) of the I.P.C. follows closely the definition given in the English Ballot Act. It contains no such word as 'voluntarily' to be found in section 171 (C), but some such word has been held to qualify the language of the English Act and we think that the same qualification must be read into the language of section 171 (D) I.P.C. and in the definition of personation as given in the electoral rules. This has also been the view of all the election tribunals in India with one exception. In the *Bareilly* case (see page 141), for instance, the Commissioners remark that it is a well-settled proposition of law that there can be no corrupt practice without a corrupt

motive, and that it is the duty of the petitioner to prove *mens rea* in every case. We agree with this view and hold that 'unless there be corruption and a bad mind and intention in personating it is not an offence' (*Stepney* : 4 O'M. and H., 46).

"A great deal of reliance has been placed by the petitioner on the municipal electoral roll and the municipal house list to show who are the real voters meant by the Council electoral roll. In the first place, there is no direct evidence that the Council electoral rolls were prepared from the municipal registers, although from the nature of similar mistakes in both it is possible that the municipal registers were consulted in revising the electoral roll of the Council. The municipal electoral roll of 1923 was itself prepared from the Council electoral roll of 1920, and this may be another explanation of the mistakes appearing in both of them. In the second place, according to the evidence of the executive officer of the municipality there are 50 per cent. mistakes in the house list and 30 per cent. mistakes in the municipal electoral roll. The mistakes are of every description and were commented on in a judgment of the Revenue Commissioner, dated March 26, 1926. As a result the municipal board passed a resolution on June 18, 1926, appointing a general committee to correct the mistakes. It is clear that no reliance can be placed on the municipal registers and voters would be justified in refusing to go for information to the municipal office. Besides the Council electoral roll is by itself final and conclusive and it was not incumbent on voters to go beyond the entries contained in the same.

"It was argued by respondent's learned Counsel that cases of personation can be condoned in certain circumstances under rule 44(2) of the electoral rules, and reliance was placed on *Amritsar City* case (see page 89). The observations there made seem to be based on a misreading of the rule in question. Bribery other than treating, and personation cannot be condoned at all, although an exception is made with respect to other corrupt practices in certain circumstances."

Actually after discussing the evidence in the various alleged cases of personation, the Commissioners were satisfied that personation, if any, was not committed with the knowledge or connivance of the respondent or his agents.

There were two publications which were alleged to contain false statements of fact in relation to the personal conduct of the petitioner and were reasonably calculated to prejudice the prospects of his election.

Annexure 5 is a notice headed "Sher ki khal men gidar" and is published over the name of Jagdish Saran. Objection is taken to the passage, "Aise ko vote nahin dena chahiya jo public ki khidmat hasb dil khwah raqam le kar ta ho". (Votes should not be given to one who would serve the public on receipt of cash amounts of his own liking.)

It is admitted that one Jagdish Saran is the son of respondent's munim, Ram Mohan Lal. Petitioner's contention is that it is the same Jagdish Saran who published the notice. There is, however, no direct evidence on the point. Rup Narain proprietor of the Mitra Press, where the notice in question was printed, says that the order was given by one Loka Mal and that Loka Mal has a son by the name of Jagdish. On the evidence as it stands it is not possible to come to any definite conclusion as to who was the publisher of annexure 5, although from the wording of the two notices it would seem that the same person was the author of both. The evidence as to the circulation of this notice is of interested witnesses and we cannot place any reliance on it.

Annexure 6 is a notice headed "Babu Chail Behari Kapur se do do baten" and is published over the name of Pandit Ram Lal. The following passage is said to be defamatory in character "Kiya jis ne Bareilly ki public ka kam hamesha apni mansha ke mutabiq raqam le kar kiya ho us ko vote den". (Are we to vote for one who has been serving the public invariably on receipt of cash amounts of his own liking ?)

The publication of this notice is admitted by the respondent. It is also admitted that petitioner is not a corrupt public worker. It has been strenuously urged on the opposite side that the statement refers to the professional conduct of the petitioner as a vakil and that he is known to charge very heavy fees. It is also argued that the contrast sought to be brought out in the notice is between a person who charges fees for his work and one who is an honorary worker like the respondent. Stress is laid on the following passage towards the end of the notice. "Is it not a fact that after entering the Council you have doubled your fees; is it now your intention to redouble them?" This passage is however so disconnected from the other, being found almost at the end of a long notice, while the alleged defamatory statement is at the very beginning, that an ordinary person would not in our opinion think that they both refer to one and the same subject. We are here considering the case of an ordinary voter who did not know the petitioner from before. In his case the insinuation contained in the passage objected to would certainly prejudice him against the petitioner. After reading the whole of the notice carefully, we have come to the conclusion that the statement in question is defamatory in character, and that it is reasonably calculated to prejudice the prospects of petitioner's election.

The question still remains as to who published the notice and whether it was published by the respondent or his agent or by any other person with the connivance of the respondent or his agent. The evidence of Ramratan Padha shows that Pandit Ram Lal of Garhaiya published the notice. It was Ram Lal himself who told the witness that he had published it. Ram Lal died at respondent's house on the day of election.

Ramratan Padha is respondent's priest and voted for him. We have no reason whatever to disbelieve his testimony. Babu Onkar Nath, vakil, who was respondent's agent and canvassed for him deposes that Ram Lal was respondent's sympathizer. He cannot say if Ram Lal took an active part in the election campaign in favour of the respondent. We are afraid Babu Onkar Nath has not told us the whole truth. If he was a worker himself, he should have known what other persons canvassed for respondent before the election. Respondent admits that Ram Lal was his sympathizer and wanted to do his work. This fact could not very well be denied in view of the circumstance than on the eve of the election Ram Lal had gone to respondent's house and that he died there the next morning. It is in the evidence both of Pandit Ramratan Padha and of Babu Onkar Nath that they had seen Ram Lal at respondent's house once or twice in the course of the election campaign. It is also proved that Ram Lal was the priest of the family of respondent's cousin. There is thus every reason to think that Ram Lal was an active worker of the respondent. All the workers were called to respondent's house on the evening of November 25, 1926.

Work was being distributed amongst them, as the next day was fixed for election. Respondent says that he retired for the night before any of the workers had left. Why should Ram Lal remain behind after respondent had gone and even after all the workers had left the place? No explanation is forthcoming. There is also no explanation why Ram Lal went to sleep in the upper storey of respondent's house. In the absence of any evidence we can but come to one conclusion and that is that Ram Lal was not only a worker but one of the principal workers of the respondent. He remained behind in order that he might be up and early to begin his allotted work on the election day. If he was ill, there was all the more reason for him to have gone home at night seeing that his residence is not far from respondent's house. Dr. Basant Kumar who examined Ram Lal's dead body certified to the police that in his opinion Ram Lal had died a natural death which was probably due to heart failure.

From a perusal of the notice there can be no doubt that it was issued solely in the interests of the respondent. Respondent himself says that he saw it for the first time at 2 or 3 P.M. on the polling day, but his agent Babu Onkar Nath deposes that he had seen it before November 26, 1926, in the course of the election campaign. We are not prepared to believe that if Ram Lal had published the notice, the fact did not come to respondent's knowledge before the day of election. Admittedly Ram Lal was an over-zealous supporter of the respondent. Can it be supposed for a moment that he would omit to mention to him the fact of the publication? Neither respondent nor his agent Babu Onkar Nath repudiated the statement made in the notice. Apart from

other considerations this would in our opinion amount to connivance on their part.

We do not attach any importance to the evidence of witnesses who depose about the distribution of the notice, nor of those witnesses who say that Ram Lal went about canvassing with respondent or his son, because all of them are biased in favour of the petitioner. There is, however, one other circumstance which goes very strongly to support our conclusion. We shall show when dealing with the next issue how false accounts have been deliberately filed in court on behalf of the respondent. Respondent had in his possession evidence which could have rebutted *the case set up by the petitioner*. The original accounts, if filed, could have proved the respondent did not bear the printing and publication charges of Ram Lal's notice. We think we are entitled to presume in the circumstances that this expenditure has been deliberately concealed so that Ram Lal's agency may not be proved. Rup Narain, proprietor of the Mitra Press, deposes that one Girja Prasad gave the order for Ram Lal's notice and also paid for the printing. Girja Prasad was summoned as a witness by respondent, but was not examined. The original accounts, if produced, could have disproved the fact that Girja Prasad did not make the payment on behalf of the respondent.

As regards the publications the Commissioners found that two did not bear the address of the publishers, but that the petitioner failed to prove that the result of the election was materially affected by the omission.

The last issue was whether the return of election expenses filed by the respondent was false in material particulars.

The word "false" used in rule 5(4) of the electoral rules¹ indicates that the return of election expenses must be proved to be deliberately incorrect. In other words corrupt motive must be shown. The motive may be to omit legitimate expenses from the return where a maximum scale has been fixed by the Governor-General in Council under rule 20 of the electoral rules, or the intention may be to conceal expenditure which would go to prove some other corrupt practices. Under rule 21 of the electoral rules every election agent is required to keep separate and regular books of account in which their particulars of all expenditure incurred in connection with the candidature should be entered. We agree with respondent's learned advocate that where regular books of account have not been kept, it does not necessarily follow that all the particulars entered in the return of election expenses must be false. Petitioner is bound to prove the falsity of the items enumerated by him in his petition.

There are altogether 18 particulars in the list attached to the petition. As regards most of them, petitioner produced no evidence and some

¹ Now paragraph 5 of part IV of the Corrupt Practices Order, 1936.

were given up at the time of argument. The following need more than a passing notice :—

F. 7.—Cost of pitching tents at the polling station.

This was done by permanent servants and not by men hired for the occasion. Respondent incurred no extra expenditure in this connection.

F. 18.—Price of motor-car purchased in October last and used in the election campaign.

It is admitted that a motor was purchased, but the evidence is that it was purchased for the use of the joint family. The purchase was made in place of a carriage and pair which were sold at the time. Perhaps the cost should have been apportioned and a part included in the return of election expenses, but we do not think there was any bad faith on the part of the respondent.

F. 13.—Travelling expenses of respondent's brother B. Ram Gopal, Deputy Collector, who came to vote from Shahjahanpur and the travelling expenses of other voters who came from outstations for the same purpose.

According to rule 19 of the electoral rules the return should show expenses incurred on account of or in respect of "the conduct and management of the election". We do not think the travelling expenses of voters would come under this description. We think the expenses to be included in the return are those which would otherwise be paid by the candidate. A candidate is not permitted to pay for the conveyance of any elector to the polling station, for that by itself is a corrupt practice under part II of schedule V.

F.1 and F.18.—We now come to the three publications, annexure 14, annexure 5 and annexure 6. The last two have already been dealt with in issue no. 5. There is no proof that respondent had any knowledge as to who issued the notice annexure 5. Even if he had such knowledge he was not bound to show the printing charges of a notice which on the face of it was defamatory unless he had recognized the publisher as his agent. Notice annexure 14 was published over the name of one Ram Das. From the contents it is clear that the notice was issued by the Congress party who had a candidate of their own and the notice itself was in reply to a similar notice published by the petitioner. Respondent could not include the cost of printing annexure 14 in his return of election expenses. We have already found that annexure 6 was published by respondent's agent Ram Lal and with his knowledge and connivance.

Respondent's account-book of election expenses was summoned by the petitioner and produced in court. It consists of only nine pages and there can be no doubt that it has been fabricated. In some entries the year 1927 was at first entered and was subsequently corrected to 1926 and in others 1927 stands uncorrected. An accountant writing the book in 1926 could not possibly have made such a mistake about the year.

There is one entry in which the month "April" is written instead of "October". This would go to show that the book was prepared shortly before the petition came up for hearing. Respondent in his cross-examination admitted that the entries in the book are all in the handwriting of his clerk Mathra Prasad. He persisted in saying so after the wrong month and year were pointed out to him. Even now it is not *denied that the book was really written by Mathra Prasad, but an attempt has been made to show that it was subsequently manipulated by the court clerk who happens to be a Khatri like the petitioner.* We do not think there is any foundation for this allegation. No reason is shown why Mathra Prasad who is still in respondent's service should act in collusion with the petitioner or his men. It is said that Mathra Prasad is evading service of summons, but no proper attempt has been made on behalf of respondent to secure his attendance. As soon as the falsity of the account-book came to light during the cross-examination of respondent, his pleader produced a second book after an hour or two before one of Commissioners to show that the original had been tampered with while in court. This second book which is without any mistake is said to be a copy of the first and meant for the use of respondent's pleaders. In our opinion there was absolutely no reason why a copy should be kept at all. The production of this so-called copy goes rather to strengthen the theory that the original (exhibit N) is also a fabricated one. It seems that exhibit N was first prepared, but there were so many mistakes in it that a second copy was considered necessary. The so-called copy was then prepared with great care and a corresponding ledger, as would appear from the entries in the book, was also made up. The copy has the clear appearance of having been written at one and the same time. A third account-book was probably then ordered to be made. Mathra Prasad was either too lazy to write it, or if he wrote one, the first book (exhibit N) was filed in court by mistake. We have every reason to suppose that respondent has a regular account-book of his election expenses. He belongs to a big firm of bankers where a number of *munims* are employed and regular account-books are maintained. The original account-book has not however been produced, because we presume there are entries in it which would go against the respondent. As we remarked in discussing issue no. 5, the cost of printing annexure 6 probably has a place in it. There may be other illegitimate expenses in the original but with them we are not concerned.

We find on this issue that the return of election expenses is deliberately incorrect in at least one material particular, viz. Rs. 13, the cost of printing notice, annexure 6.

To sum up: We find that of all the charges brought by the petitioner only the publication of one *false* statement in the circular "Chail Bihari Kapur se do do baten" has been proved and that the return of

election expenses is false so far as the cost of printing this notice is concerned. We accordingly report to His Excellency the Governor that the election of the respondent is void under rule 44(b) of the United Provinces electoral rules and that he has further incurred the disability under rule 5(4).

As to costs, it may be observed that reckless allegations have been made which the petitioner had from the outset no hope of substantiating by any evidence. In some cases the charges are entirely disproved. We, therefore, recommend that parties bear their own costs of this enquiry.

Finally, we would point out that there is a difference in the view of the various election tribunals as to whether fresh instances of a corrupt practice can be added under rule 33 by way of amendment. The Commissioners in this very case have not been unanimous on the point. We would suggest that the rule be again so altered as to make it clear whether the addition of further instances of a corrupt practice should be permitted after the petition has been presented.

CASE No. XXI

Bengal Marwari Association, 1924

(INDIAN LEGISLATIVE ASSEMBLY.)

RAI BAHADUR BISWESWARLAL HALWASYA .. *Petitioner,*

versus

BABU RANG LAL JAJODIA *Respondent.*

A returning officer (if he is not debarred) by reason of being a Government servant can stand as a candidate, but must refrain from doing anything in his capacity as returning officer. .

The proposer or seconder of a nomination must be an individual person, a natural person who may represent a firm.

An Election Court of Inquiry can enquire whether a proposer or seconder (and it would seem *a fortiori* a candidate) is disenfranchised by statute.

THE facts leading up to the present election petition are as follows : The Bengal Marwari Association of Calcutta, an Indian Commerce special constituency was called upon to elect a member to the said Legislative Assembly. The 8th October, 1923 was fixed as the date for the nomination of candidates, and 11th October, 1923 as the date for the scrutiny of the nominations for the said constituency. Babu Rang Lal Jajodia was the joint secretary of the Marwari Association. The joint secretary of the Marwari Association was specified in the second column of schedule I of the Bengal Legislative Assembly electoral regulations as the returning officer. The personal assistant to secretary, Bengal Marwari Association, was specified in the third column of schedule I as the person authorized to perform all or any of the function of the returning officer. It appears that Babu Rang Lal Jajodia was also the registering authority and the electoral rolls were originally prepared by him. In the Marwari Association, firms and companies are members, and many of these were put on the electoral roll. Apparently about two-thirds of the names, roughly speaking, on the roll are those of firms, while the remaining names are those of individuals. On the 7th October Babu Rang Lal Jajodia resigned his office as joint secretary of the Marwari Association. He sent also a telegram to the Government of Bengal resigning his office as returning officer. On the 8th October there were only two candidates, the petitioner and the respondent Babu Rang Lal Jajodia. The nomination papers were received by the personal assistant to the secretary. The nomination paper of the petitioner Rai Bahadur Bisweswarlal Halwasya was subscribed by himself. The proposer and seconder were however two firms whose names appeared on the electoral roll, viz. Messrs. Hurmukhrai Sanairam and Messrs. Shewdayal Ramjeedas. The senior partners of these firms signed the names of the firms on the nomination paper. On the 11th—the date of the scrutiny—objection was raised by the respondent that the petitioner's nomination was bad inasmuch as the nomination paper had been subscribed by two firms, and not by individuals as proposer and seconder. The petitioner in his turn challenged the nomination of the respondent on the ground that, the latter himself being the returning officer of the constituency, he was not eligible to stand as a candidate. Babu Jatindranath Banerjee, the personal assistant to the secretary, Marwari Association, overruled the objection of the petitioner, and upheld the objection of the respondent, and he declared Babu Rang Lal Jajodia as duly elected from the constituency. The petitioner thereafter filed his present application. His contention is that firms can be electors and can vote, and firms can nominate a candidate for election. It is also pleaded that the respondent was not entitled to resign his office and stand as a candidate. It is further contended that if he could and did resign, the constituency was

without a returning officer, and that therefore Babu Jatindranath Banerjee acted without jurisdiction. It is pointed out that the Bengal Government had no authority in this election matter and the telegram to the Government of Bengal is of no value. It is shown that the office of the returning officer was not filled up by the Government of India till the 27th October, 1923. It was stated that the office of the joint secretary of the Marwari Association has not yet been filled up, and it was argued that the Marwari Association had not accepted the resignation of Babu Rang Lal Jajodia. It does not seem that the acceptance of resignation is necessary. Subject to any provisions in the rules to the contrary, a member may resign at any time and he ceases to be a member (Halsbury, vol. IV, page 414) (1896, 1 Chancery, page 409). Questions may arise about his liability but that is a different matter. It was not shown that there is anything in the rules of the Marwari Association which prevented the respondent from resigning his office as joint secretary. He was appointed returning officer not by name but by virtue of his office. Our conclusion therefore is that Babu Rang Lal Jajodia ceased to be a returning officer after the 7th October.

There is nothing in our electoral rules and regulations which bars a returning officer from standing as a candidate. The matter has been placed on a statutory basis now in England and perhaps this should be done in India. The rule is that when a returning officer stands as a candidate he must refrain from doing anything in such capacity. It is not said that the respondent did any act as returning officer after his resignation. It may be said that he should have resigned before. Parker at page 6, summarizes the English Law—"If all the duties of returning officer are discharged by the acting returning officer the former is not disqualified for being a candidate by reason of being returning officer." Our answer therefore is in the affirmative.

There was no returning officer on the 8th October, 1923 in this constituency. Under schedule I of the regulations, however, Jatindranath Banerjee was empowered to do all the duties of the returning officer. It is pointed out that under regulation 3 he could only act under the control of the returning officer and that he could not receive nomination papers and hold a scrutiny unless the returning officer was "unavoidably prevented" from performing these functions. The words in an English case were "incapable of acting" and Lord Campbell thought that they might cover a case of this kind. (*Queen vs. Owens*, vol. 121, English Reports, page 36.) The personal assistant had not usurped the office. He took up his duties when the returning officer became incapable of acting. "Want of title in the person acting as returning officer will not vitiate an election which is otherwise valid" (Parker, page 61). "Elections made under usurping returning officers when there has been the form of an election have been uniformly supported" (Heyw Bo. 62).

Turning to the Bengal electoral rules it would appear that non-compliance with the rules and regulations is not enough. The petitioner has to show that the result of the election has been materially affected by such non-compliance. If the petitioner's nomination was bad, his name goes out on that ground. If the nomination was good he succeeds on that ground and not by reason of the fact that the personal assistant acted as the returning officer. We hold therefore that the petitioner cannot succeed on this ground.

It was argued that firms are members of the Marwari Association and that schedule II, paragraph 9 does not exclude firms. We must however read the schedule II along with the other rules and they clearly lay down that it must be a natural person representing the firm who can be on the electoral roll or who can exercise the right to vote and to nominate. The disqualifications mentioned in rule 7 can be predicated only of a natural person and rule 7, governs rule 8(2). The learned vakil is forced to concede that the candidate for election must be a natural person seeing that he must give his own name and his father's name and state his age and when elected he must take the oath. The cases of the elector and the proposer and the seconder stand on the same footing. We think that the word "person" has the same meaning in all these rules and regulations and that it means a natural person. Rule 11(4) lays down that "any person whose name is registered in the electoral roll of the constituency and *who is not subject to any disability stated in rule 7* may subscribe, as proposer and seconder . . . ' In the present case the proposer and seconder were firms. We hold that they must be individuals or natural persons. The nomination paper of the petitioner was not in order and we think it was rightly rejected.

The learned vakil contended that the electoral roll was final not only for the returning officer but also for this court and he referred to regulation 20(2), and to the case of *Stowe vs. Joliffe*. The last case merely is an authority for the proposition that the election court cannot go behind the electoral roll in considering the qualifications. It is open to the court, and it is the function of the court to see whether disenfranchisement would occur in the cases of persons prohibited from voting, etc. by the Statute. Regulation 20 does not stand in our way. Regulation 20 (2) (a) is explicit and we have still to see whether the proposer and seconder is disqualified under sub-rule (4) of rule 11. To say that we are concluded by regulation 20 is simply to beg the question as to whether a firm is an elector.

The authorities who framed the electoral rolls in these Commerce and Industry constituencies apparently proceeded upon the fact that because firms and companies were members of the Chamber or Association, they were entitled to be on the electoral roll. We have examined the rules and regulations from every point of view, and the

conclusion is irresistible that it was not contemplated by the legislature that an elector can be other than an individual, and that it was intended that the firms would exercise their franchise through a member or partner or representative who would be on the electoral roll.

Our conclusion therefore is that the nomination paper of the petitioner was rightly rejected and the respondent, the returned candidate, was duly elected.

CASE No. XXII

Bhagalpur North (N.-M.R.) 1921

BABU VISHWANATH JHA *Petitioner,*

versus

SWAMI VIDYANAND *alias* BISHWABHARAN PRASHAD *Respondent.*

An election court upon scrutiny will consider only questions of personal and not of material disqualification. The order of the revising authority is final, and a Court of Enquiry is precluded from enquiring into the question of possession of necessary qualifications as a voter.

To advertise that a candidate is a *chela* of Mr. Gandhi is not a corrupt practice ; but if such statement were in fact a misrepresentation it would constitute a fraud and therefore a corrupt practice under the provisions of rule 2 part I of the fourth schedule (now section 2 (a) (ii) of part I of the first schedule of the Corrupt Practices Order, 1936).

By this petition it is sought to set aside the election of the respondent to the Bihar and Orissa Legislative Council by the non-Muhammadan rural constituency of North Bhagalpur.

The respondent was elected by a majority of about 800. He obtained some 1,100 votes. The next candidate, Babu Tribeni Prasad Singh, polled about 300 votes. Babu Satyabrata Chattarji and the Raja of Supaul about 200 each and the petitioner about 100. There were two other candidates each of whom polled under 100 votes.

The petitioner assails the election upon three grounds set forth in paragraph 17 of his petition. The third ground which alleges irregularity in the reception and refusal of votes has been given up, and no evidence was offered in support of it. The first ground is stated as follows :—

“For that the respondent is not a voter and was as such ineligible for election.” Now section 6 (1) (a) of the election rules lays down that no person shall be eligible for election unless his name is registered on the electoral roll of the constituency or of any other constituency in the province. The respondent is admittedly registered on the electoral roll of the constituency of Saran within this province, but the form of the petitioner’s argument before us was that the respondent had been wrongly so registered. There was no suggestion of any failure to comply with the formal procedure enjoined by the rules and regulations regarding the preparation of the electoral roll in question and its revision by the revising authority. The contention was that the respondent had been wrongly registered because he did not possess the material qualifications specified in the second schedule of the rules. Now rule 9(3) provides that the orders made by the revising authority shall be final. It was argued however on the petitioner’s behalf that under the provisions of rule 42 this court has jurisdiction to enquire into and decide the question whether the respondent possessed the qualifications specified in the schedule. Reference was also made to the English law upon the point, and to a decision of the Commissioners in the matter of an election petition by Babu Sashi Bhusan Konar printed at page 5 of the *Bihar and Orissa Gazette, Extraordinary*, dated 14th January, 1921.¹ It was also pointed out that under rule 9(1) the petitioner not being a voter of the Saran constituency was precluded from raising any objection to the inclusion of the respondent’s name before the revising authority.

Upon the last point all that we need say is that we presume that the legislature contemplated that sufficient safeguard would be provided by confining the power of objection to the voters of the constituency. With the law of England we are not concerned since our jurisdiction is defined by the election rules. We may however point out that even

¹ The Purnea case.

under that law an election court upon scrutiny will consider only questions of personal and not of material disqualification. The disqualification alleged before us is of the latter description. Rule 42 no doubt provides *inter alia* that if in the opinion of the Commissioners the result of the election has been materially affected by any non-compliance with the provisions of the Act or the rules and regulations made thereunder, the election of the returned candidate shall be void. But the jurisdiction thereby granted is necessarily limited by the definite provisions of rule 9(3) regarding the finality of the order of the revising officer, and we are satisfied that under this rule we are precluded from enquiring into the question of the respondent's possession of the necessary qualifications as a voter. We are confirmed in this view by the conviction that the legislature cannot have contemplated the provision of the cumbrous and elaborate procedure of an election commission to determine simple questions of fact concerning the possession of such qualifications. Accordingly we declined to hear evidence upon this point.

The petition has accordingly been contested only upon the second ground which alleges corrupt practice by the respondent. The petitioner's allegations upon this point take the following form :—

It is stated that about February, 1920, the respondent held meetings at Naubakar and other places within the constituency and made speeches, in the course of which he asserted that he was a *chela* of Mr. Gandhi and was touring under Mr. Gandhi's directions in order to benefit the tenants and redress their grievances; that he had assisted Mr. Gandhi in procuring redress of their grievances for the tenants of Champaran; and that he would try and do the same for the Bhagalpur tenants by bringing Mr. Gandhi there. Then during the month of November previous to the polling the respondent, his agent and sub-agents held a number of meetings at which they informed the voters that the respondent was standing under Mr. Gandhi's orders in the interest of the tenants and that if they failed to vote for him the curse of Mr. Gandhi would fall upon them. It is stated that similar statements were made by the respondent, his agent and sub-agents to voters personally canvassed by them.

There is ample evidence and it is freely admitted by the other side that Mr. Gandhi is regarded by the voters as a Mahatma and that obedience to his wishes is considered to be a pious duty. There is evidence that at a public meeting held in Laheria Sarai in December last after the election Mr. Gandhi disavowed all connection with the respondent, and it is self-evident from the nature of Mr. Gandhi's doctrine regarding non-co-operation that the respondent's candidature cannot have had his support. There can be no doubt that if, as alleged, votes were obtained by the respondent upon these misrepresentations the act would

constitute a fraud and therefore a corrupt practice under the provisions of rule 2, part I, of the fourth schedule.

The respondent denies that he made any of the representations alleged, and he had called amongst others 24 voter witnesses who support him upon this point, and assert that they voted for him on account of the work which he was doing on their behalf.

In support of the petition 73 witnesses have been examined. Sixty of these are voters and with one or two exceptions they are tenants of the Darbhanga Raj, half of them being *jeth-raiyats* of the Raj. No less than 42 of these witnesses deposed as to the Naubakar meeting of February, 1920. Fifteen of them deposed regarding other meetings held by the respondent at about that time. The witnesses also gave evidence regarding about a dozen meetings held by the respondent and his agents in November before the polling. There is also evidence as to personal canvass by the respondent and his agents. The witnesses generally agree regarding the nature of the misrepresentations made by and on behalf of the respondent and allege that they voted for the respondent because they believed him to be a *chela* of Mr. Gandhi and standing under Mr. Gandhi's orders and because they feared the Mahatma's curse.

Six witnesses of more respectable position have been called to corroborate this evidence. The first of these, Md. Issac, is a petty zamindar. He states that a few days before the election he heard the respondent deliver a speech in the course of which he stated that he was a *chela* of Mr. Gandhi and that the tenants should vote for him if they did not wish to incur the Mahatma's curse. The witness stated that he believed the respondent's representation that he was Mr. Gandhi's *chela*. But in cross-examination he admitted that he did not credit the respondent's assertion because it was not consistent with the doctrine of non-co-operation which the witness was aware that Mr. Gandhi was then preaching.

The next witness, Kazi Ashraf Hossain, a zamindar and mukhtar, states merely that in November he heard the respondent deliver a speech in the course of which he claimed to be Mr. Gandhi's *chela*.

The petitioner himself states that in course of a private conversation with the respondent in July last the latter informed him that he was Mr. Gandhi's *chela* and a *sanyasi*. It seems difficult to understand what motive could have actuated the respondent in volunteering these assertions to the petitioner.

The next witness, Mr. Walze, a mukhtar of Darbhanga, stated that he was the respondent in the court compound at Madhubani a year ago. Hearing him described as Mr. Gandhi's *chela* the witness remarked that Mr. Gandhi was preaching anarchy. Asked to express in the vernacular what he had actually said Mr. Walze replied, "I said that Mr. Gandhi was

preaching against Government (*Government ki khelaf*) and spoiling (*begarta*) the raiyats ". To this observation Mr. Walze tells us that the respondent without attempting to controvert it merely replied, "Do not speak thus about my guru ". The evidence of this witness did not in our opinion carry conviction.

The next witness, Dwarka Nath Thakur, was a candidate in this constituency. He asserted that in the course of a private conversation with the respondent a few days before the polling the latter informed him that he was Mr. Gandhi's *chela*. He also in common with witnesses Kazi Ashraf Hossain and Babu Tribeni Prasad Singh gives an account of a speech made by the respondent at a meeting at Supaul shortly before the polling. The account given by these three witnesses is discrepant. But it is noteworthy that none of them ventured to assert that the respondent, when demanding the electors' support and asserting that he was Mr. Gandhi's *chela*, threatened them with the displeasure of the latter in case of their disobedience. From the cross-examination of Babu Dwarka Nath Thakur we gather that his memory is by no means reliable.

Babu Tribeni Prasad Singh, who was also a candidate, states that he informed the voters that the respondent was not Mr. Gandhi's *chela* and the reply which they made was that they believed the respondent to be Mr. Gandhi's *chela* because some of them had been to the Amritsar Congress and had there obtained reliable information to that effect.

It is also proved that the respondent was in the habit of wearing the garb of a *sanyasi*, and the petitioner strongly relies upon this circumstance in combination with the adoption by the respondent of the title Swami as indicating that the respondent was deliberately supporting his allegation of *chelaship* by the adoption of the garb and title of a religious devotee.

Further corroborative evidence is sought in the fact that as shown by the evidence of the deputy presiding officers at Degmara and Supaul certain voters enquired for "Gandhiji's box", that some of them described the respondent as "Gandhi's *chela*", that some of them on approaching that ballot-box took off their shoes and made obeisance to it and by other evidence that at the conclusion of polling there were shouts of "Gandhiji ki jai". It appears from this evidence that only one or two voters at Degmara and only one at Supaul enquired for "Gandhiji's box". Now the evidence of the voter witnesses is to the effect that they were instructed by the respondent and his agents to vote in "Gandhiji's box" the colour of which was red. It seems to us therefore that if that evidence were true a much larger number of voters would have made enquiries from these officers as to which box was Gandhiji's. Moreover the fact that a very limited number of voters believed that the

ballot-box was "Gandhiji's" would certainly not go far to establish the petitioner's case that it was the respondent himself who put about this misrepresentation.

The next observation which we desire to make is that even if the respondent did assert that he was a *chela* of Mr. Gandhi that assertion would not necessarily involve any fraud. Any person who like the respondent is a reverential admirer of Mr. Gandhi and to a large extent in agreement with his teaching might very reasonably describe himself as his *chela*, meaning thereby no more than that he was his follower and admirer. The case put forward by the petitioner is of a quite different character. It is that the respondent gave himself out to be a *sanyasi* and asserted a spiritual *chelaship* and therefore possessed the authority of the Mahatma to invoke the latter's curse upon disobedience. This case appears to us to be altogether inconsistent with the fact generally admitted by the petitioner's witnesses that for some weeks previous to the polling the respondent was not wearing the garb of a *sanyasi* but the usual dress in which he appeared in court. It is evident that had the respondent actually posed as a *sanyasi* he could have no possible motive for arousing suspicion by doing away with his *sanyasi* dress at the very time when he was setting up a spiritual *chelaship* which gave him authority to invoke his guru's curse.

We cannot accept the petitioner's suggestion that the fact that the respondent called himself Swami and at the outset wore *sanyasi* dress, indicates that these were assumptions intended to support the allegation of *chelaship*. The respondent had been a wanderer for many years and had severed his relations with his family. When he reappeared in his village and before he inaugurated his campaign amongst the tenants in Bhagalpur he was in *sanyasi* dress. He subsequently resumed his relations with his family. This is clear from the evidence of a resident of the respondent's village, one Ram Charita Lal, who deposed for the petitioner. In our opinion there is nothing to indicate that the dress and title were assumed in order to support the allegation of *chelaship*. We think that they were probably maintained by the respondent because they would naturally created confidence in the disinterested nature of the work which he had undertaken on the tenants' behalf.

We have already noticed the evidence that at the Naubakar and other meetings of February, 1920 the respondent asserted that he was Mr. Gandhi's *chela* and had assisted him in the Champaran agitation. There is no reason to doubt the respondent's statement that he took no part whatever in that agitation. It seems highly improbable that the respondent should have invented these two falsities. Obviously there was considerable danger that the imposture would be exposed during the nine months which preceded the election and in that case the influence

which the respondent was seeking to acquire over the tenants would necessarily disappear.

It is a remarkable circumstance that no attempt was made to corroborate the 42 voter witnesses who deposed to the Naubakar meeting by the evidence of an independent and highly respectable witness who was present at that meeting. This gentleman, who is a Sub-Deputy Collector, Babu Janaki Prashad Singh, attended the meeting under the orders of the Collector. He deposes that the respondent addressed the meeting regarding the grievances of the tenants. There is no doubt that if the respondent made the misrepresentations alleged this witness must have heard them. His evidence therefore amounts to an implicit contradiction of the evidence of the voter witnesses. We are justified therefore in regarding their evidence with extreme suspicion.

Witnesses who were questioned as to their reasons for accepting the statements alleged to have been made by the respondent regarding his connection with Mr. Gandhi stated that they had been assured by Suresh Chandra Laha, respondent's agent and Darbari Mander, Hiralal Potdar and others, the respondent's sub-agents, who had visited the Amritsar Congress of December, 1919 in company with the respondent, that they had been informed by Mr. Gandhi personally that the respondent was his *chela*. Now these persons are all tenants of the Darbhanga Raj. Suresh Chandra Laha, Darbari and Hiralal are wealthy and influential men amongst the tenants. Their interests necessarily are those of the tenants in general, that is to say they are anxious for redress of their grievances and they desire to have their own nominee in the Council to promote their interests as tenants. Yet the petitioner's case necessarily is that these men entered into a conspiracy with the respondent against their own interests in order to deceive their co-tenants into the belief that the respondent was Mr. Gandhi's *chela*. No possible motive for such conduct has been suggested or is conceivable. It is evident that if the respondent had proposed such a conspiracy these persons in their own interests would have immediately repudiated him as a cheat.

Then the story that the respondent during the month preceding the election was claiming that his candidature as Mr. Gandhi's *chela* was being supported by Mr. Gandhi himself is of a highly improbable character. For some months past Mr. Gandhi had been preaching non-co-operation and this question had been debated at the Bhagalpur Conference held in September. There is no doubt from the evidence of witnesses Kazi Ashraf Hossain and Md. Issac and that of the petitioner himself, that the doctrine of non-co-operation in the shape of abstention from voting was making considerable headway amongst the tenants during the fortnight preceding the election and that there was considerable abstention from voting particularly in the Supaul thana on that account. In these circumstances we think the respondent must have realized that it would

be suicidal to insist upon these false claims at that juncture. In any case we are unable to conceive what benefit the respondent could expect to gain by procuring his election upon pretences the falsity of which must sooner or later be demonstrated to his constituents. If as the petitioner contends the respondent is a mere professional politician, it is evident that he can only attain his ends by securing and retaining the confidence of the tenants.

The voter witnesses invariably represent themselves as having supported the respondent in consequence of Mr. Gandhi's order and from fear of his curse. They deny that any sort of work was done by the respondent on the tenants' behalf. There is no doubt that this denial is wholly disingenuous. The respondent's voter witnesses assert that the respondent was interesting himself in their grievances and did actually put a stop to illegal exactions called *farmaesh* which had been habitually taken by the underlings of the Darbhanga Raj. There is no doubt that these exactions were stopped or partially stopped at or about the time when the respondent commenced his campaign amongst the Bhagalpur tenants. Whether this was due to the action of respondent or, as is contended by the petitioner, to the action of the local manager of the Raj appears to be immaterial because in any case the tenants would naturally attribute the matter to the exertions of the respondent. The Land Revenue Administration report for the year 1919-20 contains at page 15 the following paragraph: "The Collector of Bhagalpur reports that the practice of realizing illegal abwabs by the amla of Naubakar circle of the Raj Darbhanga is believed to have been checked to a considerable extent by the attitude of the tenants in refusing to pay any rent *plus* abwabs at the Raj cutchery." At page 18 of the same report there is a paragraph as follows: "In the Madhubani sub-division of Darbhanga one Swami Vidyananda toured with the declared object of informing the tenants of their rights." In the papers before us there is ample evidence to show that the respondent was actively engaged in work on behalf of the tenants. He established Kishan-sabhas, he memorialized the local officials regarding the tenants' grievances and he was engaged in instructing the tenants as to their rights and the voters as to their privileges under the reforms scheme. These circumstances offer a sufficient explanation of the strong support given by the tenants to the respondent at the election.

There is no doubt that the tenants entertain grievances against the Darbhanga Raj. Whether those grievances are well or ill-founded is no concern of ours. Necessarily however the attitude of the respondent has been antagonistic and offensive to the Raj officials, and it is admitted that the petitioner whose personal interest in this case is almost negligible has had the weight and authority of the Raj at his back during these proceedings. In these circumstances it would not be difficult to procure

the evidence given by these Raj tenants and *jeth-raiyats*. Our conclusion as to the unreliability of this evidence is confirmed by the following circumstances. It was found upon scrutiny that the ballot-papers of five *of these witnesses who assert that they voted for the respondent under Mr. Gandhi's orders* and for fear of his curse were actually cast for a rival candidate, Babu Tribeni Prashad Singh. It was contended for the petitioner that these ballot-papers must have been wrongly included amongst those of Tribeni Babu by the returning officer. The ballot-papers are all found carefully tied in packets of 25 and there is every indication that proper care was taken by the officer concerned. In the circumstances we are bound to assume that the counting was properly made and that these votes were cast for Tribeni Babu in whose envelope they are found. Moreover two of these persons were the nominator and seconder of another candidate, Babu Satyabrata Chatterji ; there is a suggestion that one of them was taken to task on this account and there is therefore a probability that they should have voted for the Raj nominee, Tribeni Babu. The circumstances of this perjury is a strong indication of pressure put upon witnesses and of extensive resort to concoction of evidence.

For these reasons we must decline to credit the evidence adduced for the petitioner in support of the allegation of corrupt practice. In our opinion no corrupt practice has been proved and the returned candidate has been duly elected. We regard the petition as an impudent and mendacious attempt to defeat the free choice of the electors.

The respondent will be entitled to recover from the petitioner his cost which we assess at Rs. 700 (seven hundred).

CASE No. XXIII
Bombay City (M.U.) 1924
(BOMBAY LEGISLATIVE COUNCIL.)

MAHOMEDALLY ALLABUX *Petitioner,*

versus

(1) JAFFERBHOY ABDULLABHOY LALJI	..	} <i>Respondents.</i>
(2) HUSSEINALLY M. RAHIMTULLA	..	
(3) MAHOMED HUSSEIN HAVELIWALLA	..	
(4) MIRZA ALI MAHOMED KHAN	..	
(5) EBRAHIM SULLEMAN HAJI	..	

When a petitioner claims to be declared elected all the other candidates should be joined as respondents.

Further instances of the same charge (personation with connivance) can be given by amendment of particulars.

The claim of a declaration that petitioner or any other candidate has been duly elected is separable from a claim calling an election in question.

THE first two respondents were declared elected.

Respondents 3, 4 and 5 also stood for election but were not elected.

The candidates who were nominated at the election comprised the petitioner, the five respondents who have been joined as respondents in this petition and two others who have not been joined.

The names of all the candidates who stood for election together with the number of votes accorded to each appear from the following table :—

(1) Jafferbhoy Abdullabhoy	..	..	2,071
(2) Husseinally M. Rahimtulla	..	..	1,646
(3) Mahomedally Allabux	..	..	1,571
(4) Mahomed Hussein Haveliwalla	..	..	1,041
(5) Mirza Ali Mahomed Khan	..	..	943
(6) Ebrahim S. Haji	..	..	745
(7) Husseinbhoy A. Lalji	..	..	23
(8) Abdul Tyed Shaik Abdul Hussein	..	..	12

It thus appears that the difference between the number of votes polled by the petitioner and the 1st respondent was 500.

The petition calls in question the election of the 1st respondent and also claims a declaration that the petitioner has himself been duly elected.

The grounds on which the election of the 1st respondent is called in question are that the 1st respondent was guilty of the corrupt practices of personation with connivance within the meaning of clause 3, part I, of schedule 4 (as originally numbered) of the election rules, and of hiring or using public conveyances within the meaning of clause 5 of the same schedule.

The petition was accompanied by lists setting forth particulars of the corrupt practices alleged. The particulars of acts of personation were allowed to be amended by our order appended hereto and marked "B".

The allegations of personation with connivance were not proved, and the petitioner's claim was only sought to be sustained on the ground that the election of the 1st respondent was procured or induced or the result of the election was materially affected by the corrupt practice of hiring or using public conveyances.

The 1st respondent at the outset submitted that the petition could not be sustained and should be dismissed in its entirety by reason of the fact that the petitioner had omitted to join as respondents all the other candidates who were nominated at the election. This had reference to the non-joinder of the last two candidates, who, by the terms of rule 32, ought to have been joined as they had been nominated at the election.

By our ruling appended hereto and marked "C" we held that the claim by a petitioner under rule 32 to be declared duly elected is separate

and distinct from that portion of the petition which calls in question the election of the returned candidates, and that as the returned candidate alone need be joined when there is no claim to be declared elected, the petition was good in so far as it called in question the election of the 1st respondent.

An application was then made by the petitioner for leave to join as respondents to the petition the two other candidates who were nominated at the election but who had not been made respondents to the petition.

By our ruling appended hereto and marked "D" we held that we had no power to order or permit such joinder.

Rule 35 directs in effect that, subject to the other provisions of the electoral rules, our procedure is to be governed by the rules of the Civil Procedure Code, which relate to the trial of suits; and section 5 of the Election Offences and Inquiries Act, 1920, confers on us the powers vested by the Civil Procedure Code in a court when trying a suit in respect of certain matters which are specifically mentioned and which do not include the joinder of fresh respondents or the amendment of the petition.

The only power of amendment is that conferred by rule 31 under which we may allow the particulars in the list of corrupt practices to be amended.

We are only appointed to report under rule 43, and in our opinion the provisions referred to show that our report is required to be on the particular petition which under rule 34 the Governor of the province sends to us for trial; and that the only manner in which other respondents may be joined in a petition is that provided by rule 34 (2) (b), under which any other candidate is entitled to be joined on giving security within fourteen days after the publication of the petition in the gazette.

No such rejoinder had been made during the time limited, and the provisions of the rule could not therefore be complied with when the application was made. Moreover, one of the candidates who were nominated but not joined did not seek to be joined.

The result is that the petitioner had not complied with the requirement of rule 32 by joining as respondents all the other candidates who were nominated; and his claim to be declared duly elected could not be proceeded with.

The first respondent had however, within the time limited, given notice under rule 40 of his intention to recriminate against the petitioner by proving that the petitioner had himself been guilty of the corrupt practice of bribery and personation and of hiring and using public conveyances.

As the right to recriminate is only exerciseable when the petitioner claims the seat for himself, these recriminations were withdrawn in so

far as the trial of the present petition is concerned, but the first respondent claimed the right to raise such recriminations in any future proceedings.

The other respondents 2 to 5 also withdrew from the proceedings as their presence was no longer required.

In these circumstances the sole question to be tried is whether, within the meaning of rule 42 (1) (a), the election of the first respondent has been procured or induced or the result of the election has been materially affected by a corrupt practice. If so the election of the first respondent is, by the last provision in rule 42, to be void.

* * * * *

The Commissioners found that it was established that about 50 hired taxis were in fact used for promoting the election of the 1st respondent, and that the result of the election had thereby been materially affected.

Under rule 43 we report that the 1st respondent has not been duly elected.

The petitioner has not put forward a valid claim to be declared elected, and it is therefore not competent to us to report that he has been duly elected.

We record under rule 45 that no corrupt practice has been proved to have been committed by the 1st respondent or his agent or with the connivance of the 1st respondent or his agent.

Our recommendation as to costs is that the petitioner be liable in the first instance to Government for the cost of setting up this commission which has occupied $11\frac{1}{2}$ days and that this be retained out of the deposit made by him to Government, the balance being recovered from the petitioner. That the 1st respondent do pay the petitioner the cost of setting up the commission and the taxed costs of and incidental to this petition and to the trial of it. That the petitioner do pay the 1st respondent the taxed costs of and incidental to the filing of his written statement and of the costs incurred by the 1st respondent, if any, in connection with the list of further particulars of the charge of personation which was filed by the petitioner and in connection with recriminations put forward by the 1st respondent. That the petitioner do pay Mr. Davar Rs. 100 and Mr. Haji Rs. 150 as their fees respectively for attending the Commission for four days.

ANNEXURE A.

The petitioner seeks to file a list containing details of other instances in which he alleges that the first respondent's election agent connived at the commission of a number of acts of personation which are not mentioned in any of the lists attached to the original petition.

This is objected to by the first respondent, on whose behalf it is contended that such a list is not what is contemplated in rule 31 of the electoral rules (as originally numbered). Clause 1 of that rule provides that the petition shall contain a statement in concise form of the corrupt practices on which the petitioner relies. Clause 2 of that rule provides that the petition is to be accompanied by a list signed and verified setting forth full particulars of any corrupt practice which the petitioner alleges.

The petitioner in clause 3 of his petition did set out the charge on which he relies which is *inter alia* being guilty of corrupt practices within the meaning of schedule IV (as originally numbered) part I, clause 3, namely the procuring or abetting personation.

The original petition was accompanied by a list.

Now the petitioner wishes to file a further list and files a supplementary petition in support thereof. Paragraph 4 of that further petition also makes a charge that corrupt practices within the meaning (as Counsel for petitioner now states) of part I, clause 3, of the schedule were committed as per particulars thereto annexed. The particulars annexed repeat the charge of the same corrupt practice namely, personation with connivance and then sets out a list of particulars giving the names of the electors on the roll and the details whether he was dead, absent from Bombay, untraced or in Bombay without having voted. Rule 31 (clause 3) empowers the Commissioners to allow the particulars given in the original list to be amended.

In our opinion the addition of further instances of the same charge—personation with connivance—does not constitute the making of a further charge of corrupt practices, but only gives further instances of the commission of the same charge of the particular corrupt practice of personation with connivance. It is in fact an amendment of the particulars of the corrupt practice which was originally alleged.

The supplementary petition is admitted.

The application for leave to file the supplementary petition is made at a comparatively early stage and is supported by an affidavit which is uncontradicted.

Another preliminary question that has been argued is whether inspection should be permitted at this stage of the counterfoils of the voting papers under rule 1 in part 7 of the Bombay electoral regulations.

It is contended by the respondent 1 that so far as the particulars contained in schedule 1 of the original petition and in the list contained in the supplementary petition are concerned, no inspection is necessary for the petitioner's case, because he charges personation with connivance, and a positive charge of that nature can only mean and imply that a petitioner makes a definite case based on his knowledge or on evidence which is available.

So far as the five instances contained in schedule 2 of the original petition are concerned, they stand on a different footing because connivance is not therein charged. The absence of a charge of connivance may imply that the petitioner has not positive knowledge of personation, and it may follow that it would be unfair and unnecessary to prevent him from having inspection of the counterfoils relating to these five instances.

It may be stated at once that no question arises of interfering with the secrecy of the ballot, because the production of the mere counterfoils would not disclose how the elector voted.

Our ruling need only be confined to the question whether the petitioner should be permitted to have inspection of the particular counterfoils relating to his charges at this stage.

We hold that the petitioner is not entitled to have inspection of any counterfoils at the present stage relating to the charges of personation with connivance.

We also hold that the petitioner is entitled to inspect at the present stage the five counterfoils which relate to his charges without connivance and set out in schedule 2 to the petition.

The inspection of these five counterfoils will be taken by the petitioner and/or his legal adviser in the presence of a clerk of the Collector and of the secretary to this commission, and of the 1st respondent and/or his legal adviser.

ANNEXURE B.

It is contended for the 1st respondent that the entire petition should be dismissed on the ground that it is one and that its prayers are inseparable.

Rules 30, 31 and 32 make it very clear, in our opinion, that this is not the case.

Under rule 30, a petition may be presented against a returned candidate on the ground that corrupt practices have been committed by him or his election agent. No further charge or claim need be made.

Rule 32 confers a separate and distinct right on a petitioner which he may or may not avail himself of. It enables him, if he so desires, in addition to calling in question the election of the returned candidate, to claim a declaration that he himself or any other candidate has been duly elected.

This is a right which is in terms expressed to be in addition to the right of challenging this election, and we have no difficulty in holding that a claim of this nature in a petition is separable from a claim calling an election in question. This view receives support from the decision in *Aldridge vs. Hurst*, Law Reports 1 C.P.D. at page 415, where the Court states: "We see no reason why the prayer claiming the seat for some one might not form the subject of a separate petition from that which is directed against the return of the sitting member."

ANNEXURE C.

The petition which we are now trying has been presented against the 1st respondent who is one of two returned candidates, and is founded on allegations of the commission of the corrupt practices of personation and hiring public conveyances with connivance.

In addition to calling in question the election of the 1st respondent the petitioner, who was also a candidate, claims a declaration that he himself has been duly elected.

In the petition 5 persons are joined as respondents, all of whom were candidates nominated at the election, and in this form the petition has been presented and under rule 34 (as originally numbered) this commission has been appointed to try it.

As soon as possible after such appointment, a copy of the petition, so presented, was served on each of the 5 respondents named in it and was published in the gazette, as directed by rule 34 (2) (b) of the electoral rules.

The 1st respondent availed himself of the privilege conferred by rule 40(1) on a returned candidate, and within 14 days from the publication of the petition gave notice of his intention to give evidence to prove that the election of the petitioner would have been void if the petitioner had been the returned candidate and a petition had been presented complaining of his election.

The 1st respondent also filed a written statement from which it appears that 2 other persons were nominated as candidates at the election who have not been joined as respondents.

Rule 32 provides that if a petitioner claims a declaration that he himself has been duly elected he shall join as respondents to his petition all other candidates who were nominated at the election.

This duty is therefore imperative where the petitioner claims to have been duly elected, and it is apparent that the reason for imposing the duty is that each of the other candidates may have the opportunity to raise recriminations to show that the petitioner is not entitled to the declaration which he claims.

It was at first contended before us that the petition should be dismissed by us in its entirety, as a consequence of the failure of the petitioner to join all the candidates as respondents. But we have ruled that in our opinion the claim for the declaration that the petitioner has been duly elected is a relief separate and distinct from that by which the election of a returned candidate is called in question ; and we have held that at any rate the petition is not bad in its entirety because in cases where the petitioner merely calls in question the election of a respondent it is not incumbent on the petitioner to join as respondents all the candidates who were nominated at the election.

The trial of the petition was therefore allowed to proceed at any rate in so far as it sought to call in question the election of the 1st respondent.

The petitioner now asks to be permitted to join as respondents the two other candidates who, as is now admitted, were nominated at the election, but who were not made respondents in the original petition. The application is opposed by the 1st respondent.

It is contended for the petitioner that the joinder of the two other candidates can be permitted and rule 33 is relied on which provides that subject to the other provisions of the rules an election petition shall be enquired into as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure. It is also contended that *the rules permit of such joinder.*

The main provisions in the rules to which the Civil Procedure Code must be read as being subject are those contained in rule 40, under which a right to recriminate is conferred. It is contended for the petitioner that the proviso to this rule which prohibits such recrimination unless the notice and deposit there referred to shall be given or made within the time limited is enacted for the protection of the petitioner and may be waived by him; and he offers to waive performance of these conditions precedent to recriminations being raised. He also relies on the fact that rule 32 imposes no limit of time during which all the other candidates should be joined.

Of the 2 candidates who were nominated at the election and who have not been joined as respondents one has now given a warrant to the petitioner's Counsel authorizing him to appear and state that he has no objection to being joined as a respondent and the other does not offer his consent to be joined though he was present while the application was being made.

The question whether it is competent to us at this stage to permit the 2 other respondents to be joined depends on the true construction of the several rules now to be considered.

The petition which we are now appointed under rule 34 (2) (a) to try is that which has been presented under rule 30 (1).

That petition must conform with rule 31 (1) and is to be accompanied by a list setting forth particulars of any corrupt practice which the petitioner alleges. The Commissioners have power to allow the particulars in this list to be amended, and this is the only power of amendment that is conferred by the rules in express terms.

Under rule 32 it is incumbent on the petitioner to join all other candidates who were nominated if he claims the declaration that he was duly elected, and under rule 34 the petition only has to be served on the respondents who have been joined.

The present petition therefore has not as yet been served on 2 proposed respondents. It has, however, been published in the gazette, and it may be that it was competent to them to apply under rule 34 (2) (b), to be joined as respondents, and the fact that a respondent so seeking to be joined is liable to give security as if he were a petitioner indicates that he is regarded as a party who will set up a substantive case, which can only be to prove that the petitioner ought not to be declared elected.

But where a candidate who has not been joined so insists upon being made a respondent, he must, under rule 34 (2) (b) do so within 14 days of the publication of the petition, and if he recriminates, he must, under the proviso to rule 40(1) give notice of his intention within the same limit of time, and supply a list of particulars similar to that which the petitioner is bound to supply. In effect he becomes a petitioner against the petitioner.

If such a candidate insists upon being made a respondent in the manner provided, the omission of the petitioner to join him in the first instance may possibly be cured. And in our opinion that is the only way in which a candidate who ought to have been joined and who has not been joined can become a respondent.

In the present case neither of the candidates who ought to have been joined and who were not joined has complied with the requirements of either rule 34 or rule 40, and even if they claimed to be joined now or were to be ordered by us now to be joined, the joinder could not be made in the manner provided by the rules referred to.

It must therefore be held that we have no power to order or permit the joinder of the two candidates who were nominated at the election but were not joined as respondents in the petition.

The result is that the petition, in so far as it claims a declaration that the petitioner was duly elected, does not comply with the requirements of rule 31, in that all the candidates who were nominated at the election have not been joined as respondents and it is not competent to the petitioner to claim the declaration.

The trial of the petition will proceed only in so far as it calls in question the election of the 1st respondent.

CASE No. XXIV

Bombay City North (N.-M.U.) 1924

(BOMBAY LEGISLATIVE COUNCIL.)

JOSEPH BAPTISTA *Petitioner,*

versus

(1)	J. K. MEHTA .. ..	..
(2)	POONJABHAI THAKERSEY ..	..
(3)	A. N. SURVE, AND TEN OTHERS ..	..

}
Respondents.

Residential qualification discussed.

Where the returned candidate's election is void the petitioner who claims the seat and received the next largest number of votes should be declared elected.

[The law on this subject has been altered by the Corrupt Practices Order, 1936. Under para 3 (2) of part III such claim must be supported by proof that the petitioner received a majority of the valid votes, or would have done so but for votes obtained for the returned candidate by corrupt practices].

ONLY two questions remain to be considered, and reported on, namely, (1) Whether the election of the first respondent is void for non-residence, and (2) Whether the petitioner is entitled to be returned for the reserved seat in place of the third respondent.

Rule 3 provides *inter alia* that the Legislative Council of the Governor of Bombay shall consist of 86 elected members, and these by rule 4 are to be elected by the constituencies specified in the schedule I. The name of the constituency in which the petitioner and the first respondent offered themselves for election is Bombay City (North); the extent of the constituency comprises the municipal wards B, E, F and G; the number of members is three and one seat is reserved.

The special qualifications which elected members must possess are prescribed by rule 6, which provides (*inter alia*) that no person shall be eligible unless his name is on the electoral roll of the constituency or of any other constituency in the province, and he has for the period of six months immediately preceding the last date for the nomination of candidates in the constituency resided in the constituency or in a division, any part of which is included in the constituency, the city of Bombay being deemed to be a division.

It appears from the admission of facts made on behalf of and in the presence of the first respondent before us at the hearing of this petition that the first respondent maintains a house or residence at Santa Cruz which is situated some miles north of the northern boundary of the city of Bombay in the South Salsette Taluka; that he sleeps and takes his morning and evening meals there; and that the members of his family always remain there, sleep and take all their meals there. The first respondent is engaged as a secretary to and works in the offices of the Indian Chamber of Commerce which are situated in the city of Bombay, and he spends the usual working hours and takes refreshments during the day at those offices. It is not suggested that the first respondent maintains a second place where he sleeps and takes his meals or where the members of his family remain and sleep and take their meals (to use neutral terms) within the city of Bombay.

For the first respondent, two contentions are put forward: First, that by maintaining a residence at Santa Cruz he did reside within the constituency within the meaning of rule 6, provided that that rule be read with clause 2 of schedule II; and second, that even if his residence in Santa Cruz be held not to be residence within the constituency, his presence in the city of Bombay at the offices mentioned in itself constitutes a residence which is sufficient to comply with rule 6 read by itself.

Under rule 6 it is perfectly clear that no person is eligible for election as a member unless he resides in the manner therein prescribed. It is

equally clear, in our opinion, that the facts admitted constitute residence by first respondent at the date of nomination at Santa Cruz, which is not within the limits prescribed by rule 6. That rule deals with the qualifications of members and cannot be explained or added to by reference to clause 2 of schedule II which deals with the qualifications of electors. The last mentioned qualifications differ in material particulars from the qualifications of members.

Clause 2 of schedule II states alternatively that the place of residence of an elector for a city constituency may be within the limits of the North Salsette Mahal or the South Salsette Taluka. The rules nowhere contain a general definition clause to the effect that the term city of Bombay shall be deemed to mean and include North and South Salsette. The liberty to reside within North and South Salsette is a liberty specially conferred on electors, and it is not conferred on persons who wish to become elected members.

The result is that the legislature has, with some particularity, prescribed qualifications for elected members which are different from the qualifications which it has prescribed for electors, and it is impossible to read the provisions of the rules which prescribe the residential qualifications of electors into those which relate to the residential qualifications of elected members.

The rules have been drawn with perfect consistency. A person standing for election as a member for the Bombay City (North) constituency must reside in that constituency or in a division, any part of which is included in the constituency, the city of Bombay being deemed to be a division. If a person resides outside those limits and in a Bombay suburban district he is eligible for election under schedule I as a member for the constituency of thana and Bombay suburban districts.

With regard to the second contention, namely, that the presence of the first respondent in the city of Bombay during working hours as the secretary to and in the offices of the Indian Chamber of Commerce, constitutes residence within the meaning of rule 6, this was supported by reference to decisions under English statutes relating to bankruptcy, payment of taxes, etc. and in which the words used are in some cases residence or place of business. In any case we must follow the rule of construction that a statutory enactment should be construed with reference to its object, and there can be no doubt that the object of rule 6 is to ensure that elected members should reside in the ordinary and actual sense of the word among their constituents. A definition of the words "place of residence in a constituency" is contained in part II of schedule II of the rules for the Council of State, and though that definition is only expressed to be given for the purposes of that part, its wording may, in our opinion, be adopted as well expressing the nature of the residence

which the legislature intends that elected members should have, as prescribed by rule 6.

In our opinion the first respondent was not at the date of nomination eligible for election as he had no place of residence in the constituency of Bombay City (North) or in a division any part of which is included in the constituency within the meaning of rule 6.

It has been contended that the acceptance of the nomination by the returning officer is conclusive, as no objection was raised before him as to the first respondent's disqualification under rule 6, and as his name was on the electoral roll for the constituency for which he stood. We do not accept this contention.

In view of the facts which are now placed before us we are of opinion that the first respondent was disqualified for nomination, and we are of opinion that there was an improper acceptance of his nomination within the meaning of clause (c) of rule 42. It is also our opinion that the results of the election has been materially affected by the acceptance of that nomination and that the election of the first respondent is therefore void.

We also state it as our opinion that the returning officer discharged all the duties which are imposed on him by regulation 3 of part III of the Bombay regulations.

Having expressed our opinion that the election of the first respondent is void, it remains for us to report under rule 43, whether in our opinion, the petitioner has been duly elected. He seeks such a declaration in his petition, but it has been contended by some of the respondents that we should not report that the petitioner has been duly elected, in which case a casual vacancy would occur which would be filled under the procedure laid down in rule 24. The learned counsel who appeared under the instructions of the Advocate-General contended that rules 24 and 43 are complementary and should be read together, so that if a petitioner claims the seat in his petition and has received the next largest number of votes he should be declared duly elected, and that in such a case an election under rule 24 does not become necessary.

No re-~~re~~ nominations have been made against the petitioner in accordance with rule 40, and he has secured the next largest number of votes after the first two candidates, and we therefore report under rule 43 that he has been duly elected.

In view of this report it is unnecessary to consider the question whether the petitioner was entitled to claim the reserved seat on the ground that he is a Mahratta Kunbi within the meaning of clause (f) of rule 2. But it does appear to us that the definition in clause (f) of that rule might be made clearer by inserting the word "Hindu" immediately before the word caste, so that it would read as follows: "Mahratta

means a person belonging to any of the following Hindu castes ", if that is the intention of the electoral rules.

The petitioner has intimated that it may be taken that his petition is withdrawn on this point as against the third respondent in the event of the petitioner being declared elected.

On the question of costs we recommend under rule 43 (2) that the sum of Rs. 250 be paid to the Advocate-General's representative by the petitioner, that the costs of Government in setting up this tribunal (which has been occupied $3\frac{1}{2}$ days) be paid in the first instance by the petitioner and that the petitioner be entitled to recover two-thirds of such costs from the first respondent. The petitioner will pay the first respondent Rs. 100 as and for the costs of the first respondent's written statement.

CASE No. XXV
Bombay City South (N.-M.U.) 1930
(BOMBAY LEGISLATIVE COUNCIL.)

TRICUMDAS DWARKADAS OF BOMBAY .. *Petitioner,*

versus

SIR VASANTRAO A. DABHOLKAR AND DR. R. T.
NARIMAN *Respondents.*

The standard of proof necessary to establish a corrupt practice should be that required at a criminal trial.^o

Even if a candidate did not withdraw, the corrupt practice of bribery is established by an offer or promise to pay a gratification, with the intention of inducing withdrawal.

Certificate of indemnity granted under section 8 (1) (ii), part II of Act XXXIX of 1920.

PETITIONER is registered as an elector on the electoral roll of the Bombay City (South) non-Muhammadan urban constituency of the Bombay Legislative Council to which three seats are allotted. An election was held on 18th September, 1930 for electing members thereof, as four candidates, Dr. Alban J. D'Souza, Sir Vasantao A. Dabholkar, Dr. R. T. Nariman and Mr. Ramchandra M. Bhatt, had stood to contest the three seats. The last-named candidate withdrew from the candidature a few hours after the polling had commenced, and it is the petitioner's allegation that he was induced to withdraw his candidature by the offer or promise of the payment of Rs. 5,000 by Sir Vasantao Dabholkar and Dr. Nariman conjointly with one D. Cawasji and that, as a result thereof, Mr. Bhatt withdrew from the said election and the three remaining candidates were declared duly elected. The petitioner therefore alleges that the two candidates were guilty of corrupt practice at the election within the meaning of schedule V, part I, rule 1, of the Bombay electoral rules¹ and prays that for the reason the election of both of them should be declared void.

He has presented the petition only against two of the returned candidates, impleading Sir Vasantao A. Dabholkar as respondent 1 and Dr. R. T. Nariman as respondent 2.

In giving particulars of the corrupt practice, he relies upon a letter addressed and alleged to have been handed over to Mr. Bhatt, signed by the two respondents and Mr. D. Cawasji, which runs as follows :—

“ Town Hall,
Bombay, 18-9-30.”

Dear Ramchandra,

We the undersigned promise to pay you Rs. 5,000 (five thousand) only if you withdraw immediately from this contest to avoid the trouble. This amount is placed at your disposal strictly for the purpose of charity as you may desire.

Yours sincerely,

(Sd.) V. A. DABHOLKAR,

(Sd.) R. T. NARIMAN,

(Sd.) D. CAWASJI.”

He further alleges that immediately thereafter Mr. Bhatt addressed and handed over to the Collector of Bombay a letter announcing his withdrawal from the election, and made a similar announcement to the intending electors then present at the Town Hall where the poll was being taken.

The respondents have put in their written statements. Respondent 1 in his lengthy statement denies that he induced Mr. Ramchandra Bhatt to withdraw from the election by offering the inducement alleged by

¹ Now section 1 of part I of the first schedule of the Corrupt Practices Order, 1936.

the petitioner or any inducement or that the latter withdrew in consequence of the offer alleged to have been made, as he had already decided to withdraw and communicated his decision to him and others sometime before the conversation regarding payment of Rs. 5,000 took place; that the alleged action on his part does not amount to a corrupt practice, nor was the result affected by it; that the letter does not accurately record the terms of the arrangement; that shortly, the terms were as summarized in paragraph 9 of the statement, viz. that on seeing the Police arresting batch after batch of women-Desh Sevikas who had come forward to picket the voters and apprehending trouble from the crowds present there and feeling distressed about the matter, Mr. Ramchandra Bhatt decided at about 10-30 A.M. to withdraw from the election and communicated that decision to this respondent and to others; that he then interviewed Mr. Healy, the Acting Commissioner of Police, and on being assured by him of the possibility of still more serious trouble, Mr. Bhatt decided to withdraw from the scene of the contest and go away from the Town Hall; that shortly after he told respondent 1 and others that the blood of men which had been shed should be atoned for by payment of a sum to charity; that this idea appealed to the respondent and eventually the letter was written out; that there was great excitement round about and that the letter does not record the exact arrangement, which was, that Mr. Ramchandra M. Bhatt should immediately withdraw from the scene of the contest; that it was not agreed upon that he was to withdraw from the contest; that the governing idea was to avoid all further bloodshed and expiate for the blood which had been shed; that it was common knowledge that Mr. Bhatt could not have withdrawn from the contest at that stage, and that he knew it well; that, lastly, he signed the letter without reading it in a state of great mental excitement.

Respondent 2 denies the fact of inducing Mr. Bhatt to withdraw as well as the fact that the latter withdrew as a result of any offer from him: he denies being guilty of a corrupt practice. He alleges that respondent 1 sent for him and informed him in presence of Mr. Ramchandra Bhatt that he (Bhatt) had as a matter of fact retired; that he was asked to sign the letter and he signed it without reading it, as he was then in a state of great excitement and suffered from the effect of heat stroke and was feeling giddy; that Mr. Y. G. Pandit, Mr. Bhatt's agent, had already informed him before he signed the letter that Mr. Bhatt had actually withdrawn.

The most important documents in the case are the letter promising payment of Rs. 5,000 to Mr. Bhatt and the letter written by him to the Collector, as returning officer, announcing his withdrawal from the contest. These were produced from proper custody and was admitted and marked as exhibits A and B respectively.

In order to appreciate the points of law argued on behalf of both the respondents, it is necessary to state that the 4th of August, 1930 was the date fixed for nominations of candidates and 7th August, 1930 the date appointed for the scrutiny of nominations under rule 11(3) and (7). It is urged that a withdrawal of candidature to be an effective withdrawal should have taken place under rule 11(8) before 3 o'clock in the afternoon of the date succeeding that appointed by the Local Government for the scrutiny of the nominations. That date in this case would be 8th August and the hour 3 P.M. Mr. Bhatt not having withdrawn his candidature then, it was not open to him to withdraw it at all at any stage or on any day thereafter. His withdrawal, therefore, at 11-10 A.M. on 18th September was not an effective withdrawal; in fact, it is argued that under the rules, there is no provision for withdrawal after the stage in the elections mentioned in rule 11(8) and hence, even if it be found that Mr. Bhatt withdrew from the election as a result of the promise made in exhibit A, there would be no corrupt practice under the rules. Respondent's contention is that the withdrawal was ineffective at that stage, and that, inducing a candidate to resort to such an action by offer of a gratification would not come under rule 1, part I of schedule V. In support of this contention attention is drawn to the scheme laid down by the rules for holding elections which scheme is to the effect that where the number of candidates who are duly nominated and who have not withdrawn their candidature in the manner and within the time specified in sub-rule 8 of rule 11 exceeds that of the vacancies, a poll shall be taken—rule 14(1). It is argued that any withdrawal of candidature thereafter does not affect the necessity for taking a poll, and polling has to go on whatever the number of candidates, once the taking of poll has been decided upon; the result would be that even if all candidates but one withdrew long before or just after the taking of the poll has commenced, the polling has to go on till the last minute fixed for its closing. In dealing with this part of the case, we are of opinion that the definition of the words "Electoral right" does not support the respondents' contention. The words "Electoral right" mean the right of a person to stand or not to stand as, or to withdraw from being a candidate, or to vote or refrain from voting, at an election. Now in terms of this definition, if a person has a right to stand as a candidate, he has also a right to withdraw from being a candidate, unless that right has been taken away by the rules; and the rules nowhere take away that right. Rule 11(8), on which reliance is placed, is to be read along with rule 12(2). If a candidate by whom the deposit of Rs. 250 is made under rule 12(1) withdraws his candidature in the manner and within the time specified in sub-rule (8) of rule 11, his deposit is returned to him, otherwise not. This is not to be read to mean that any other manner of withdrawal or withdrawal at any other time is prohibited. This amount of Rs. 250 is taken as a deposit to provide for expenses of

polling in accordance with rule 14(1), where the number of candidates duly nominated exceeds the number of vacancies ; and if a candidate withdraws after it has been decided to take a poll, he forfeits the deposit. But thereby his right to withdraw later, if he so desires, is not taken away.

It will be observed that no restriction whatsoever is placed on his right to withdraw. It is not provided that if it is exercised in the manner and within the time specified in sub-rule 8 of rule 11, then only would it be effective and not if exercised in any other manner and at any other time. If the legislature wanted to provide for shutting out withdrawals at a stage later than that specified in sub-rule (8) of rule 11, it would have specifically provided for that. This very word is used in schedule V, part I, rule 4 and it cannot be said that it is used in any restricted sense there. If these words be interpreted in the restricted sense contended for by the respondents it would lead to absurd results. If the object of the legislature was to preserve the purity of franchise and the purity of elections, then, reading the words in a restricted sense would defeat that object. Because it would be open to any candidate or any person to offer a bribe to a candidate at the time when the polling is actually in progress, to withdraw from the election, and thereby facilitate the election of the remaining candidates, as they would have to face one rival the less, and still it would not be a corrupt practice. Several English cases were cited in the course of the argument to show that interference with voters by way of bribery, etc. was a corrupt practice. There is no reason why the principle of those cases should not govern the case of interference with candidates. The purity of election has to be preserved right up to that end ; it is not, therefore, conceivable that, if a bribe is offered to a candidate to withdraw in the midst of the polling, it would not be an offence, because, withdrawal, to be an effective withdrawal, could only take place in the manner and at the time specified in sub-rule (8) of rule 11. We may also point out that if the interpretation contended for by the respondents be accepted, the effect would be that the legislature will have made the offence of bribery under section 171(B) of the Indian Penal Code much wider than the corrupt practice under the rules. We, therefore, find that there is no substance in the contention that, withdrawal after the time specified in sub-rule (8), rule 11 being ineffective, no corrupt practice can be committed under the rules in respect of such a withdrawal.

Another question raised on behalf of the respondents was that the promise of payment to Mr. Bhatt was meant "strictly for charity" and therefore there would be no corrupt motive behind it. English cases bearing on the point in respect of charitable acts of candidates towards voters were cited, including *Wigan's* case (1881), 4 O'M. & H., 13, where the remark is made by Bowen, J., that "Charity at election times ought to be kept by politicians in the background". These

cases lay down that in each case the governing motive or intention of the act should be found ; if it be found to be pure charity and nothing else, the act would be innocent, otherwise not, and that the line of demarcation between a pure and a corrupt motive is very thin. It is a mixed question of law and fact, and from the evidence given at this trial we find that the object or motive with which the promise to pay Rs. 5,000 to Mr. Bhatt was made by the respondents was to induce him to withdraw from the contest and thus make their election secure ; he was the only rival and he had to be eliminated to make their position safe and their election a walk-over. That was the governing idea and not one to benefit any charity ; that the money was to go to charity "strictly" was a subsidiary motive and of secondary importance. The object in the first instance was not to benefit any charity, nor to expiate or atone for any sins of bloodshed—when in fact there was no bloodshed—but to get Mr. Bhatt out of the way under the cloak of a contribution to charity. The parties knew that a direct promise to pay money to a candidate who continued to be a candidate to make him withdraw was an offence. They therefore resorted to this device of clothing it as charity and thus escape the consequence of that act. As would be shown later, it is not as if the idea of promising the payment of Rs. 5,000 for purposes of charity struck the parties at 10-30 A.M. on the day of election (18th September), all of a sudden, as is tried to be made out by respondent 1. The idea was being nursed for several days before that, but did not result in anything tangible for various reasons. On the day of election, however, Mr. Bhatt felt that he had hardly any chance of success and that if he had to retire, he had better do so not empty handed but with the credit of having won something to be spent in charity. We are, on a review of the whole evidence on the point, unable to come to the conclusion that the governing motive of either the makers of the promise, i.e. the respondents, or of the acceptor thereof, i.e. Mr. Bhatt, was one of pure charity and nothing else. The consideration that moved Mr. Bhatt to accept the proposal was that by getting Rs. 5,000 to be spent in such charity as was to be indicated by him, he was earning religious merit.

It is argued that this inquiry is not in the nature of the civil inquiry, but a penal or at least a quasi-criminal inquiry, and that therefore the evidence should be considered as at a criminal trial, and if there is a doubt in the Commissioners' minds as to the proof of the charge against the respondents the benefit of the doubt should be given to them. We are aware that under rule 37 the procedure applicable to the inquiry is to be as nearly as may be, in accordance with that applicable to the trial of suits under the Code of Civil Procedure, 1908, but that the inquiry partakes also of the nature of one for the trial of an offence cannot be denied—See *Grant vs. Overseers of Pagham* (1877), 3 C.P.D.,

page 80. The standard of proof required to bring home the alleged corrupt practice to the respondents should be determined accordingly.

That Mr. Bhatt did retire after exhibit A was signed is also proved ; but, even if he had not and even if he could not have withdrawn from being a candidate, so far as the signatories are concerned, it is enough in our opinion if they have offered or promised the gratification of paying Rs. 5,000 to induce him to withdraw to bring their action within the purview of rule 1, part I, schedule V (see Rogers on Election, vol. II, page 269, edition 1928). On this point it is instructive to see what Coleridge J., says in a similar case—*Henslow vs. Fawcett*, 3 Ad. and Ellis, page 51 at page 58 : “ It is true that this is a statute highly penal, yet in construing penal statutes we must not by refining, defeat the obvious intention of the legislature. The question here is as to the meaning of the word ‘ corrupt ’. My brother Storks argues as if corrupting and procuring to vote or forbear to vote were the same thing. *Sulston vs. Norton* (3 Burr., 1235) distinctly shows that it is not so, and that a person may be guilty of corrupting who has not been guilty of procuring. It is not unimportant to look to other circumstances which are parcel as it were, of the statutable provision against bribery. Now it has been decided to be immaterial whether the party to whom the money is given or promised vote or not and even whether he have or have not a right to vote It appears to me that the offence of corruption is complete, whenever one party gives or promises money for the purpose of inducing the other to vote or forbear from voting, and that other professedly accepts for that purpose, the promise or money so made or given. Thus the offence is complete by the one giving with such intention and the other professedly accepting with such intention. He who gives under these circumstances and with this purpose appears to me to be corrupt and he who accepts, to be corrupted, within the meaning of this Act.” We accept the principle of this decision and applying it to the facts of this case, we find that the corrupt practice was complete when the respondents promised Mr. Bhatt Rs. 5,000 with the intention of inducing him to withdraw from the contest and he accepted it professedly with that intention, irrespective of the question whether under the rules he could or could not have withdrawn at that stage.

We have not till this moment mentioned the fact that respondent 2 is not a novice at the game of buying off rivals. He has admitted before us that at the prior election in March, 1930 he paid one of his rivals Rs. 750 and the other Rs. 1,000 to withdraw from the contest and they withdrew and he was elected. This expense was not, of course, shown in his return of election expenses and although he stated that he had spoken about the payment to Mr. Domingo, an officer connected with the election branch in the Collector's office, no action seems to have been taken against him. This fact was brought out in his cross-examination ;

a question to that effect was put by petitioner's learned Counsel and objected to by respondent 2's learned Counsel. The Commissioners allowed it to be put having regard to section 146(3) of the Evidence Act. Respondent 2's learned attorney has asked us to grant a certificate of indemnity under section 8 (1) (ii), part II of Act XXXIX of 1920. We are of opinion that as he has answered truly all questions which in this respect he was bound to answer, such a certificate of indemnity in respect of that action which is likely to incriminate him and expose him to a penalty may be granted and we accordingly grant it. As it was prominently brought to our notice, we could not keep it back and had to embody it in our report.

This also is a proper place in the report to record the action of respondent 1. It seems one of his relatives who had been working for him had employed a man, one Ratanlal A. Mehta by name, for purposes of his election. He sent notices to respondent 1 to be paid the balance of his remuneration. Respondent 1 did not pay but sent on the notices to his relative, who according to him must have paid Ratanlal, and thereafter no further notices were sent to him. He has not paid that relative, but according to rule 19(2) (part K of form V) such expenses have to be shown in the return of election expenses. That he has not shown in his return is admitted and he gives two reasons for the omission : (1) that he did not know that any such expenses have to be shown in the return, and (2) that he got the notices long after he sent in the return of expenses. As the petition before us does not charge respondent 1 with any corrupt practice in that connection we merely record the fact in our report. We find therefore that the respondents have failed to make out the case set out in their written statements.

It was alternatively argued on behalf of the petitioner that if on the facts disclosed at the trial a corrupt practice under schedule V, part I, rule 1(a) cannot be found to be proved but one under rule 1(b) found to be proved, i.e. a promise of any gratification to a candidate as a reward for having withdrawn, then a finding should be given accordingly. A Privy Council ruling—L.R. 7 I.A., page 240—*Rajroop vs. Abul* was cited in support. Really speaking on the above findings no occasion for considering the question arises. But all the same we would point out that rule 33(2) requires full particulars of each corrupt practice and the date and place of commission thereof to be set out in the petition and if any amendment is desired on account of any omission, then it should be applied for under sub-rule (3) and unless that is done, it would not be proper to change one corrupt practice into another.

We have now to consider the cases of Mr. Bhatt and Dinsha Cawasji under rule 47 (a), (b) and record a finding whether a corrupt practice has been proved to have been committed by Mr. Bhatt who was a candidate and the nature of such corrupt practice, and whether Dinsha

Cawasji is proved at the inquiry to have been guilty of any corrupt practice and the nature of such practice, with any recommendation we may desire to make for the exemption of the latter from the disqualifications incurred by him under the rules. Both of them were given an opportunity to show cause why their names be not so recorded in the report. As for Mr. Dinsha Cawasji, it follows from the above findings that he has been guilty of the commission of the same corrupt practice as respondents 1 and 2 under schedule V, part II, rule 1, viz. making an offer or promise of a gratification to a candidate with the object of inducing him to withdraw from being a candidate at an election. He has furnished us with a written statement explaining his conduct, but we are not satisfied with it and record our finding as above.

As for Mr. Bhatt, he too has given a written explanation in which he says that some one from the crowd told him that he was making a sacrifice by withdrawing and so respondent 1 was also asked to make some sacrifice and that he had agreed to pay Rs. 5,000 to charity and then an arrangement was arrived at to write out a letter to that effect; that he did not withdraw because of the letter but because of what was happening outside the Town Hall; that as the suggestion for charity came accidentally, he thought a good purpose was going to be benefited and adopted it. The contents of the letter however, belie this piece of specious pleading. The letter distinctly says, if you immediately withdraw we the signatories will pay you Rs. 5,000. Broadly speaking, his case stands or falls with that of the respondents. If they promised him a gratification for inducing him to withdraw his candidature and if he accepted it and so withdrew, then he would be guilty under schedule V, part II, rule 3(b) of the rules. The learned Counsel who appeared for him divided his argument into two parts—one on a point of law and the other on facts. On the point of law he argued in common with the arguments of the learned Counsel for both respondents that once a candidate has failed to withdraw in the manner and within the time specified in sub-rule (8) of rule 11, it was not open to him to withdraw thereafter. The question has already been disposed of by us in the earlier part of our report.

It is further argued that Mr. Bhatt's action would merely amount to an attempt (an unauthorized attempt) to withdraw and that such an "attempt" was not made penal by schedule V, part II, rule 3, just as it is made an offence by section 511 of the Indian Penal Code. We have already said that we do not accept his contention about the withdrawal being invalid and therefore there is no need to deal with this part of his contention. But, if it were necessary, we would refer in this connection to the following observations (at page 57) of Patterson J., in *Henslow vs. Fawcett* cited before. "The corruption is complete without the vote being given", i.e. in this case the corruption is complete without

Mr. Bhatt withdrawing. Coleridge J.'s observations go further and are to the effect that if the acceptor of the offer does not possess the right to vote and still professes to accept it, as such, the corruption is complete, i.e. in this case even though Mr. Bhatt did not possess the right to withdraw, and that, as his learned Counsel says, he has the right to come back at 2-30 P.M. and claim a polling of the votes in his favour as a continuing candidate, the corruption was complete the moment he accepted the offer which he did (1) by delivering exhibit B to the Collector, and (2) by going away from the Town Hall. It is true that the rules do not make a specific provision for such a withdrawal, but on the other hand they do not prohibit a candidate from withdrawing at any time after the date of scrutiny if he desires so to do.

As to facts, it is argued on the evidence that there is really nothing against Mr. Bhatt. It is argued that Mr. Pandit, his own friend and helper, should not be believed, that respondent 1 when he says that Mr. Bhatt himself told Mr. Pandit to reduce the arrangement to writing should not be believed as he said so to save his own skin. Some capital is made out of the fact by his learned Counsel that in the press statement he published that very evening Mr. Bhatt says nothing about this arrangement and that therefore he could not have had any such intention as is now attributed to him. We think that he studiously avoided all reference to it in order to show to the public that he was moved merely by the sufferings of the people and by nothing else. Exhibit A cannot be a false record of the arrangement, if Mr. Bhatt asked Mr. Pandit to write it out. Then it is said that Mr. Bhatt being a rich man would not stoop to commit a corrupt practice for the sake of Rs. 5,000. But what if he thought that thereby he was benefiting some charity or other without his having to spend a single pie? In that respect his case is very similar to that cited by the learned Advocate-General's representative, Mr. Billimoria—*Imperator vs. Appaji*—I.L.R. 21 Bom., page 517. There, the Mahars of a certain village who had been suspended from their office attended a meeting held at the house of their Patel, at which the Patel was present and agreed to pay a sum of Rs. 300 towards the repair of the village temple (and not to the Patel), if they were restored to office, and it was held that the Patel had committed an offence under section 161 of the Indian Penal Code. The observations of Macleod, C.J., at pages 543-44 in the case of *Emperor vs. Amiruddin*, 24 Bom. Law Reporter, page 534, are also apposite and instructive. We may say that the intention or motive of the signatories in promising the amount to Mr. Bhatt was to get him out of the way and "to avoid trouble" as recited in exhibit A. Mr. Bhatt's intention or motive was to earn some money for a charity and thereby secure a sort of gratification for himself—a something which would please him—by becoming the instrument of benefiting a charity of his choice.

We report therefore that in our opinion the election of the respondents 1 and 2 has been induced by a corrupt practice and that the result of the election has been materially affected by a corrupt practice, viz. that respondents 1 and 2 induced Mr. Ramchandra M. Bhatt to withdraw from being a candidate by offering or promising to pay to him Rs. 5,000 to be paid to charity, and that their election is void—rule 14 (1) (a). We further record under rule 47(a) in our report a finding that a corrupt practice has been proved to have been committed by Mr. Ramchandra M. Bhatt and the nature of such practice is such as is set out in schedule V, part II, rule 3(a) to wit, that he being a candidate agree to receive a gratification as a motive to withdraw from being a candidate at the election; and also a further finding that Mr. Dinsha Cawasji has been proved at the inquiry to have been guilty of a corrupt practice and the nature of such corrupt practice is such as is set out in schedule V, part II, rule 1.—to wit, that he not being a candidate, committed the corrupt practice of promising a gratification to a candidate, viz. Mr. Ramchandra M. Bhatt, with the object of inducing him to withdraw from being a candidate and we do not recommend that he be exempted from the disqualification he has incurred in that connection under rule 5(3).

As for costs, our recommendation is that all costs of and incidental to the setting up of the commission be in the first instance recovered by Government from the petitioner and that the same be retained out of the amount deposited by him and the balance remaining thereafter be recovered from him personally. That the same, i.e. costs of and incidental to the setting up of the commission be paid by respondents 1 and 2 to the petitioner and that respondent 2, if he pays the whole amount to the petitioner, do recover four-fifths of the same from respondent 1. We further recommend that the petitioner do recover a sum of Rs. 4,000 for his costs from the respondents and that respondent 2, if he pays the whole amount to the petitioner, do recover four-fifths of the same from respondent 1; and we further recommend that the Advocate-General do recover Rs. 800 for his costs from the respondents and that if respondent 2 pays the above amount he do recover four-fifths of the same from respondent 1. Respondents 1 and 2 will bear their own costs.

CASE No. XXVI

Bombay Central Division (M.R.) 1935

(INDIAN LEGISLATIVE ASSEMBLY.)

HOUSEINBOY ABDOOLABHOY LALLJEE .. *Petitioner,*

versus

ARMED EBRAHIM HAROON JAFFER	} <i>Respondents.</i>
A. M. QURAISHI ..	..
MAHOMED HASHAM MOLEDINA ..	..
KAZI ABDUL HAMID ..	..

The electoral roll as amended by orders of the revising authority is *final and conclusive* against an election inquiry tribunal. The errors in it must stand.

Law of agency discussed.

Criticism of political conduct must be distinguished from imputation against private conduct. There may be a statement of fact which is not an inference from the public acts of the person criticized.

APART from a dispute as to the age of the respondent no. 1, the grounds on which his election was impugned were two-fold. First, that he was not qualified as an elector for the constituency, because he was not assessed to income-tax in the financial year preceding that in which the publication of the electoral roll took place. It was contended that the electoral roll was conclusive, not only against the returning officer, but also against the election inquiry tribunal.

Secondly, petitioner alleged the commission of three corrupt practices : (1) publication of false statements, (2) one case of personation, and (3) the issue of circulars and a poster without the name of the publisher.

The following are extracts from a lengthy report :—

It is contended on behalf of respondent no. 1 that the electoral roll is conclusive not only against the returning officer but also on the election inquiry tribunal, and that it is not permissible for the latter to go into the question of the qualification based on clause (d) of rule 6 of part II of schedule II. Rule 7 refers to the disqualifications to which a person must not be subject in order to be entitled to have his name entered on the electoral roll. Rule 8 relates to qualifications including sub-rule (1) (iii) (c) and is to be read with clause (d) of rule 6 of part II of schedule II.

It appears that after the publication of the electoral roll in which the name of respondent no. 1 was entered at serial no. 15 Poona Cantonment, an application (exhibit 109) was made on 24th July, 1934 by Moledina respondent no. 3 to the Judge of the court of Small Causes, Poona, who was the revising authority under regulation 4(1) read with rule 9, sub-rule (2) (5). The revising authority rejected the application on the ground that the objection based on non-assessment to income-tax in the year 1933-34 was not made in the prescribed manner under regulation 3, sub-regulation (2) as it did not specify the evidence which the applicant intended to lead, and therefore the objection not being lodged in the prescribed manner should be rejected under regulation 3, sub-regulation (4). We cannot go into the question of the soundness of the grounds of the decision of the revising authority. Where a certain authority is clothed with power finally to decide a certain matter, it has unfettered jurisdiction to decide the matter, which is entirely independent of the manner of its exercise and involves the power to decide either way rightly or wrongly on the facts presented before it. See *Malkarjun vs. Narhari*, I.L.R. 25 Bom. 337 at page 347 P.C.

Under regulation 5, part II the Collector shall make an amended roll in accordance with the orders passed by the revising authority under the preceding regulation no. 4. Regulation 6 lays down that the electoral roll of any constituency as amended shall be conclusive evidence for the purpose of determining whether such a person is an elector in

such constituency. We are unable to accede to the contention on behalf of the petitioner that the electoral roll is conclusive only against the returning officer and not against the election inquiry tribunal. Rule 9, sub-rule (3) of the electoral rules lays down that the orders made by the revising authority shall be final, and the electoral roll shall be amended in accordance therewith and shall be republished. Sub-rule (6) lays down that any person may apply to such authority as may be appointed in this behalf by the Governor-General for the amendment of the electoral roll. The election inquiry tribunal is not such an authority. The electoral roll can be amended by an application to the revising authority under rule 9, sub-rule (3) or to the authority appointed by the Governor-General under sub-rule (6). Otherwise it is conclusive. When a statute creates a right not existing at common law and prescribes a particular remedy for its enforcement, then that remedy alone must be followed: per Willis, J., in *Wolverhampton Water Works Co. vs. Hawkes Ford* (1859), 6 C.B.N.S. 336; *Chunilal vs. Ahmedabad Municipality*, 13 Bom. L.R. 958 at page 960.

We think therefore that the rules and regulations contemplate that the electoral roll shall be conclusive not only on the returning officer but also on the election inquiry tribunal. Regulation 6 is quite clear and lays down that the electoral roll shall be conclusive evidence for the purpose of determining whether any person is an elector in such constituency. In *Stowe vs. Joliffe* (L.R. 9 C.P. 734) it was held that the register (electoral roll) is conclusive not only on the returning officer but also on every tribunal which has to inquire into elections, except only in the case of persons prohibited from voting any statute or by the common law of Parliament. See Halsbury's Laws of England, 1st ed., vol. XII, paragraph 886. The same view is accepted in the *Pembroke Borough's* case, 5 O'M. & H., 135. When it is said that a register is to be conclusive, what is meant is that the errors in it, if any, must stand. The same view is taken in Central Provinces Legislative Council. C.P. Commerce and Industry constituency in the petition of *Seth Mathradas vs. D. Laxmi Narain* (see page 288), where it was held, following the judgment in the *Pembroke Borough's* case, 5 O'M. & H., 135 at page 142 that the electoral roll is final and conclusive as to qualifications, and not as to disqualifications, i.e. it does not entitle any one to vote who is suffering under a statutory disability. This view is consistent with the opinion expressed in other election inquiry cases. See the *North Bhagalpur* case (see page 165), the *Purnea* case (see page 592), *Rawalpindi and Lahore Divisions* (see page 611), *Kistna* no. 1 (see page 454). The same view is adopted by Hammond in his book "The Indian Candidate and Returning Officer", pages 19 to 22, where it is observed "An elector is a person whose name rightly or wrongly is on the electoral register. He should possess certain qualifications. Even if he does not and his name is

on the register, his vote is good. The vote of certain persons, however, who definitely are disqualified by these rules, even if their names are on the electoral register, might not be refused by a presiding officer but would be rejected on scrutiny during the trial of an election petition." The other rules and regulations lead to the same inference. Part III, regulation 3 (1) (i and ii) shows that the returning officer may refuse nomination on the ground (1) that the candidate is ineligible for election under rule 5 or rule 6 (ii) that a proposer or seconder is disqualified from subscribing a nomination paper under sub-rule (4) of rule 11. So also the same regulation 3, sub-regulation (2) (a) lays down that the production of any certified copy of an entry made in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in the entry to stand for election or to subscribe a nomination paper, as the case may be, unless it is proved that the candidate is disqualified under rule 5 or rule 6 or, as the case may be, that the proposer or seconder is disqualified under sub-rule (4) of rule 11 (read with rule 7). It would thus appear that the question of disqualifications can be inquired into, but not of qualifications as to which the electoral roll of any constituency is declared to be conclusive for determining whether a person is an elector in such constituency. See regulation 6, part II. It is therefore permissible for the election inquiry tribunal to go into the question of disqualification of respondent no. 1, Ahmed under rule 5, sub-rule (1) (f), but not into the question of qualification under rule 8, sub-rule (1) (iii) (c) read with regulation 6(d) of part II of schedule II, as to which the electoral roll is conclusive.

It is contended, however, that under rule 42 and rule 44(c) if the result of the election has been materially affected by any non-compliance with the provisions of the Act and the rules and regulations thereunder the election of the returned candidate shall be void, and therefore if there is a non-compliance with the provisions of rule 8, sub-rule (1) (iii) (c) read with schedule II, part II, paragraph 6(d), the election tribunal has jurisdiction to declare the election void. But rule 42 and 44 do not override but are subject to the express provisions of rule 9(3) and regulation 6, part II, which clothe the electoral roll with the character of conclusiveness for determining whether any person is an elector, i.e. has the qualifications laid down by the rules and regulations for being an elector.

We think therefore that it is not necessary to go into the question whether respondent no. 1 has the qualification that he was assessed to income-tax in the year 1933-34 for the purpose of being enrolled on the electoral roll. If, however, it is necessary to express any opinion on this point, it is clear that respondent no. 1 was assessed to income-tax for the year 1933-34 and also paid it. The proviso to section 34, Indian Income-Tax Act, XI of 1922, clearly suggests that subsequent assessment

to income-tax relates back to the year 1933-34. The charge of income-tax is regulated by section 3 of the said Act. It is pertinent to observe that in that section the charge is referred to as "for the year" and not "in the year". If, however, it is necessary that the notice of assessment must have been issued in the year 1933-34, it must be held that respondent no. 1 was not assessed to income-tax in the year 1933-34. We would, however, suggest that the words "for" or "in respect of" should be substituted for the word "in" appearing before the words "the financial year" in clause (d) of paragraph 6 of part II of schedule II. Even though respondent no. 1 was assessed to income-tax for the year preceding the publication of the roll and actually paid it, the ambiguity of the expression "in the year" has given rise to the contention urged on behalf of the petitioner.

Our findings are that the electoral roll is conclusive as to the qualification of respondent no. 1 as an elector and therefore he was duly qualified as an elector.

The next questions arising for consideration are whether the election of respondent no. 1 has been procured or induced by any of the corrupt practices referred to in paragraph 10 of the petition as per particulars stated in lists I to III annexed to the petition, and whether the result of the election has been materially affected by any of the corrupt practices above referred to, and whether the election of respondent no. 1 is void. In paragraph 10 of the petition the petitioner has alleged that the respondent no. 1 has been guilty of every form of corrupt practice mentioned in the section, and in the lists he has given particulars of the said corrupt practices. Before us he has confined his evidence to three allegations of corrupt practices: (1) publication of false statements by dissemination of the leaflets, exhibit 161 printed at Samarth Press, Faizpur, exhibit 162 printed at Samarth Electric Press, Dhulia, and exhibit 163 printed at Loksevak Press, Bhusaval, which were reasonably calculated to prejudice the prospects of the petitioner's election, (2) personation by Abdul Gaffur Golandaj (exhibit 312), who was not entitled to vote at Malegaon on the ground that he was not an income-tax payer, of another person of the same name Abdul Gaffur Sait (exhibit 316) who was so entitled, (3) issuing of circulars (exhibits 230-A, 235-A and 251) and the poster (exhibit 237) without the name of respondent no. 1 as the publisher.

With regard to exhibit 161 printed at Faizpur it appears from the evidence of Kulkarni (exhibit 170) that Nur Mahomed gave an order for printing 4,000 copies at his press on the 7th of November and delivery was taken on behalf of Nur Mahomed on the 7th by Mahomed Hussein Budhan, who is the cousin of Nur Mahomed. The second lot of 2,000 copies was delivered on the 8th November to one Nurkhan Abbas whose signature appears to be as that of Munkhan. An order for 2,000 more copies was given which were delivered on the 10th to a person who has

not signed the delivery book. But payment in respect of these 6,000 copies was made by Nur Mahomed who had already given an order for printing an appeal in favour of respondent no. 1, exhibit 165, which consists of the printed matter of exhibit 172 and the signatures on exhibit 173. One of the signatories to this appeal is Nur Mahomed himself. He paid Rs. 20 in respect of the costs of printing of which Rs. 18 were credited for the first job of printing the appeal leaflet, exhibit 165 and Rs. 2 were credited to his account in respect of the second job of printing the Koran leaflet, exhibit 161.

Nur Mahomed in his evidence (exhibit 401) produced duplicates of the receipts (exhibits 404 and 405) and wanted the court to believe that he had paid in fact Rs. 20-12-0, of which Rs. 18 were paid in respect of exhibit 165 and Rs. 2-12-0 were paid in respect of the cost of printing his visiting cards and that nothing at all had been paid by him in respect of printing, exhibit 161. It would appear from exhibit 416 that the original account-books show that Rs. 20 and not Rs. 20-12-0 were paid by him on the 25th March, 1935. It appears clear that exhibit 405 is in respect of bill no. 436 for work done some months before, whereas exhibit 404 referred to bill no. 5 in respect of the work done on or about the 7th November.

It appears clearly that Nur Mahomed paid Rs. 20 in respect of the printing of exhibits 165 and 161 and not Rs. 20-12-0 as alleged by him in his evidence. It is also clear from the evidence that Nur Mahomed was working for Ahmed. It appears from the photograph (exhibit 346) that he attended to party given by respondent no. 1 to His Excellency Sir Fredrick Sykes and stood just near Ahmed's brother Ismail. He signed, exhibit 165, the appeal, in favour of respondent no. 1 which he got printed at the Samartha Press, Faizpur. He tried to explain his conduct in signing exhibit 165 by suggesting that he signed it in his capacity as the president of the Anjumane-Navjawanane-Islam because though he was working for Dr. Hamid he was overruled by the majority of the association and was compelled to sign it. The resolution of the association which he promised to produce is not forthcoming. His explanation therefore is in our opinion unreliable. Unless Nur Mahomed and respondent no. 1 were on the best of terms, it is not likely that Abdul Razak would depose that they both came together to him to get exhibit 163 printed at Bhusaval, even though Abdul Razak may have invented the story.

Nur Mahomed in his evidence could not deny that he gave an order for printing 6,000 copies of exhibit 174, the same as exhibit 161, because his signature appears on exhibit 174, but he falsely stated that he got it printed in the interest of Dr. Hamid.

"Agent" is defined in rule 30(a). " ' Agent ' includes an election agent and any person who is held by Commissioners to have acted as an

agent in connection with an election with the knowledge or consent of the candidate." The law of agency in election has long been held in England to go much further than the ordinary law of principal and agent. A candidate is responsible generally for the actions of those who to his knowledge for the purpose of promoting an election canvass and do such other things as may tend to promote his election, provided that the candidate or his authorized agent has reasonable knowledge that these persons are so acting with that object. According to Halsbury's Laws of England, 2nd edition, vol. XII, paragraph 501, page 245, "A candidate's liability under the parliamentary common law of agency depends upon a peculiar principle special to this matter and distinct from the principles prevailing in criminal or civil law of agency. The candidate's liability under this principle may extend to the acts of every person who is *de facto* a member of the staff which is conducting the election and whose services are directly or indirectly recognized or made use of by the candidate or his election agent, whether such person be paid or unpaid." Reference may be made to the law of Parliamentary Elections and Election Petitions by Hugh Fraser, 3rd edition, page 73, where it is laid down: "That is putting it into a very simple form, but with regard to election law the matter goes a great deal further, because a number of persons are employed for the purpose of promoting an election who are not only not authorized to do corrupt acts, but who are expressly enjoined to abstain from doing them, nevertheless the law says that if a man chooses to allow a number of people to go about canvassing for him, to issue placards, to form a committee for his election, and to do things of that sort, he must, to use a colloquial expression, take the bad with the good. He cannot avail himself of these people's acts for the purpose of promoting his election, and then turn his back, or sit quietly by, and let them corrupt the constituency."

It appears clear from the other evidence in the case and the circumstantial evidence referred to above that the leaflet exhibit 161 was got printed by Nur Mahomed for or on behalf of Ahmed, respondent no. 1. Rule 4 of part I, schedule V, relates to the publication by a candidate or his agent of any statement of fact which is false and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, which statement is reasonably calculated to prejudice the prospects of such candidate's election.

It is contended on behalf of respondent no. 1, that exhibit 161, does not come within the mischief aimed at by rule 4, part I of schedule V, as it is not a statement of fact in relation to the personal character or conduct of the petitioner and that it was not reasonably calculated to prejudice the prospects of the petitioner's election. The relevant portion of exhibit 161 runs as follows :—

These two calculations are the main grounds of our opinion and we propose to say very little about the rest of the evidence. We examined witnesses on both sides, but they said nothing which disturbs our conclusion. Some of their evidence we have accepted, other parts are obviously biased. It is in evidence that a number of identification slips were issued in respect of which no votes were recorded. When a voter went in to the polling room he stated his name and he was then supplied with an identification slip. When this had been duly filled in he presented it to the polling officer and received in exchange a voting paper. When the voting was interrupted, there were naturally a certain number of voters who held in their hands identification slips; 59 of these have been produced by Sohan Lal, who was the representative at this polling station of the respondent Nanak Chand. A smaller number were thrown on the table and were sent up to headquarters by the polling officer. This is additional evidence, if any were wanted, that there were voters who were prevented from voting by the disturbance and the closing of the poll; but that point is not in issue. It is also evident that a large proportion of these voters were Nanak Chand's supporters, for otherwise 59 identification slips would not have found their way to the hands of Nanak Chand's man. This evidence, therefore, confirms our opinion. We are, therefore, in a position to say with great confidence that the result of the election was not materially affected by what took place at Malikpore.

We recommend that the petitioner pay respondent's costs, which we have fixed at Rs. 950.

